

Official Gazette



REPUBLIC OF THE PHILIPPINES

EDITED AT THE OFFICE OF THE PRESIDENT, UNDER COMMONWEALTH ACT NO. 638
ENTERED AS SECOND-CLASS MATTER, MANILA POST OFFICE, DECEMBER 26, 1905

VOL. 57

MANILA, PHILIPPINES, APRIL 17, 1961

No.

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OFFICIAL WEEK IN REVIEW

April 9.—**A**FTER his breakfast this morning the President motored to the Manila Golf Club in Makati, Rizal, where he played nine holes with Manuel Nieto, Jr., chairman of the Games and Amusement Board, and Jose Galatas.

This evening the President attended a dinner of the "Solid North," an organization of civic and political leader from the Northern and Central Luzon provinces. The affair was held at the Philippine Navy Clubhouse.

The "Solid North" association presented three candidates for the NP vice-presidential nomination; namely, Senators Cipriano Primicias, Quintin Paredes, and Speaker Protempore Constancio E. Castañeda.

This was the second time the President attended an affair given by civic and political leaders from the North. He had attended a dinner given last week by the Norluzonians.

Upon receiving the resolution on the vice-presidential candidates, the President said he would endorse it to the convention which, he said, would choose the presidential vice-presidential candidates of the party.

Before attending the "Solid North" dinner, the President inducted Tomas de Guzman and Eulogio de Guzman, Jr., sons of Gov. Eulogio de Guzman of La Union, into the NP. The induction of the brothers was held significant, as Gov. De Guzman was elected under Liberal Party. The De Guzmans were inducted into the NP at the President's private residence in Quezon City.

The President also motored to St. Mary College auditorium, where he attended the closing day of the four-day convention of the Philippine Veterans Legion.

In his brief remarks the President assured the vets he would take steps to insure an honest and orderly election.

The President received a plaque from the PVL for having shown interest in the welfare of the veterans, war widows, and orphans.

April 10.—**A**FIVE-HOUR meeting of the NP executive committee today failed to resolve the Garcia-Rodriguez rift and to settle other pressing party problems, like the holding of a primary.

Except for an agreement that President Garcia and Senate President Eulogio Rodriguez themselves decide the issue of about 400 contested delegates, the intra-party situation was believed to have dipped further when Amang confronted President Garcia with a new White Paper.

The document, first read by the Senate leader himself and continued by Mayor Lacson, contained nine pages with seven specifications of complaints.

President Garcia was immediately put on the defensive, and his defense and the expression of views by the other members of the NP ruling body used up much of the time of the marathon meeting held at the Manila Hotel.

The highlights of the conference:

1. The President and Amang will meet at a time and place to be decided by them within one week to resolve the question of 400 primary delegates in 18 provinces and three chartered cities.

2. The two leaders will then report to the NP ruling body which will decide on the need of convoking the committee to another meeting.

3. The question of the party convention was not taken up.

The President motored to the Manila Hotel at 12:35 p.m. accompanied by Assistant Executive Secretary Mariano R. Logarta. Upon arrival at the Manila Hotel, the President was escorted to the presidential suite, where

he was fetched by Legislative Secretary Vicente Logarta when most of the NP executive committee members had arrived.

The Chief Executive found out that the NP executive committee members had already been furnished with copies of a new "White Paper," which Amang claimed, was the fourth in a series he had written denouncing alleged graft committed by persons close to the President.

It was a tumultuous session marked by unleashed tempers over the widening rift between the President and Senate President Rodriguez.

A Malacañang spokesman said the President took the initiative of discussing the controversial "White Paper" and explained every point in the catalogue of charges levelled at him by the Senate President.

The same Palace source said that the majority, if not all, of the members of the NP executive committee were satisfied with the President's explanation.

The President sat down with the NP committee for almost five hours.

It was held possible that the President and Rodriguez may meet anew on Saturday after President Garcia's arrival from a four-day trip to Bacolod City and Estancia, Iloilo.

Before motoring to the Manila Hotel, the President had breakfast with Speaker Daniel Z. Romualdez and Speaker Protempore Constancio E. Castañeda, and plotted moves in his meeting with the NP executive committee.

The breakfast conference was held at the President's private residence in Quezon City.

From the Manila Hotel, the President returned to his private residence in Quezon City where he spent the night.

April 11.—**P**RESIDENT Garcia appointed today Justice Cesar Bengzon as Chief Justice of the Supreme Court, succeeding retired Chief Justice Ricardo Paras.

The President, likewise, appointed Justices Dionisio de Leon and Felipe Natividad, both of the Court of Appeals, as Associate Justices of the highest tribunal of the land.

Justices De Leon and Natividad will fill in the vacancies brought about by the retirement of Supreme Court Justices Marcelino R. Montemayor and Jose Gutierrez David. Justice Montemayor retired last year while Justice David retired last January.

The appointment of the three justices were in accordance with Article VIII, section 5, of the Constitution and other existing laws governing the appointments of the justices to the Supreme Court. The President signed the appointments before he sailed for Bacolod City early this morning.

The elevation of Justice Bengzon as Chief Justice and the promotion of Justices De Leon and Natividad to the highest tribunal were agreed upon by President Garcia and his council of leaders during a breakfast conference held in Malacañang last Friday.

Bengzon's appointment to the highest judiciary position capped his impressive and brilliant record in the court of justice. He is the senior member of the Supreme Court. He hails from Camiling, Tarlac.

President Garcia left Malacañang for the RPS *Lapu-Lapu* at 8 o'clock this morning. Before the *Lapu-Lapu* sailed for Bacolod City at 9 a.m., the President received on board the ship Govs. Godofredo Reyes of Ilocos Sur, Felipe Garduque of Cagayan, Manuel Barretto of Zambales, and Eulogio de Guzman of La Union. They discussed local problems.

Later, Lt. Gen. Manuel F. Cabal, Armed Forces chief of staff, reported to the President on the recently concluded SEATO conference in Bangkok which Cabal attended.

After Cabal, Finance Secretary Dominador Aytona and Acting Gov. Andres Castillo of the Central Bank conferred with President Garcia.

The President directed Administrator Vicente Araneta of the Agricultural Credit and Cooperative Administration and Auditor General Pedro M. Gimenez to release all check's drawn in favor of FACOMA for Virginia tobacco they have sold to the ACCFA.

President Garcia had supper in his study room on the *Lapu-Lapu* with Sen. Arturo Tolentino; Reps. Vicente Gustilo, Inocencio Ferrer, and Agustin Gatuslao; former Sen. Enrique Magalona; and former Gov. Juan Triviño of Camarines Sur.

April 12.—**T**HE PRESIDENT and his party were accorded a rousing reception by a mammoth crowd upon arrival in Bacolod City aboard the *RPS Lapu-Lapu* from Manila.

President Garcia was pleasantly surprised to see the participation in the welcome of truckloads of laborers and employees of three sugar centrals owned by J. Amado Araneta, treasurer of the Liberal Party.

NEC Chairman Jose Locsin, Gov. Valeriano Gatuslao, and Mayor Teofisto Cordova of Bacolod City led government officials and people from all walks of life in the reception which was considered unprecedented in the province.

A fluvial parade met the *Lapu-Lapu* and escorted the yacht to Banago wharf, where upon landing and receiving full military honors, President Garcia and the First Lady led a long motorcade to the Sacred Heart Church at Lupit for the *Te Deum* and the blessing and inauguration of the Gov. Gatuslao driveway of the church.

At the Sacred Heart Seminary, the President and his party were received by Msgr. Manuel Yap, Bacolod bishop; Fr. J. Jumaoas, seminary rector; and officials of Barangay Sang Virgin led by Antonio Gaston, national president, and Virgilio Dulton, president of the Bacolod chapter.

The First Lady donated bedsheets to the Bacolod Orphanage through Mrs. Julia Infanta, president of the Catholic Women's League, before leaving together with the President and party for a rally of provincial, city, and municipal officials and employees, barrio council members, and the public at the Negros Occidental High School stadium which was jam-packed by people.

From the stadium, President Garcia motored to the La Salle gymnasium for a luncheon engagement sponsored by the Federation of Sugarcane Planters, where he delivered a short address.

Later, the President proceeded to the *Lapu-Lapu* for a rest. At 3 p.m. he had a 30-minutes exclusive conference with provincial, city, and municipal officials on their problems.

At 5:30 p.m. the President reviewed a civic and military parade at a stand built at the public plaza. The parade ended at the University of Negros Occidental, where the First Lady formally opened the *Feria de Caridad* of the Sacred Heart Church.

At 7 p.m. President Garcia was guest of honor and speaker at the induction of officials of the Negros Press Club held at the Sea Breeze Hotel. Press Secretary Jose C. Nable inducted the officers.

Later, the President and the First Lady with party attended the *Kayumanggi* dance where Mrs. Garcia proclaimed Miss Hanneli Montilla as muse of the Press Club.

The President and his party boarded the *Lapu-Lapu* before midnight for the trip to Estancia, Iloilo, where they are expected at 2 p.m., tomorrow.

April 13.—**P**RESIDENT Garcia was royally welcomed today upon his arrival at Estancia, Iloilo, where people from all the towns of the fifth district of the province congregated early this morning to see and hear him.

Estancia, which is considered the Alaska of the Philippines, outdid itself in receiving the President, considering the fact that Vice-President Macapagal also visited the town at the same time.

Owing to insistent demands, the President had to speak at an impromptu rally held in front of the market of Estancia and received a pledge from Mayor Eusebio Reyes that the town will give him a bigger majority than in the 1957 election when he won over Jose Yulo.

About 100 motorized fishing boats participated in a fluvial parade welcoming the Chief Executive and his party.

From Estancia, the President led a motorcade through the next town of Batad, where Mayor Jose Bañez urged him to speak at another impromptu rally, and read a resolution approved by all municipal officials and members of barrio councils endorsing the President's reelection bid.

In Sara the President inaugurated the emergency hospital in the presence of delegation from all over the fifth district of Iloilo.

Speaking at rallies, Rep. Jose Aldeguer urged the people of his district not to vote for him if they will not vote for President Garcia.

From Sara, the President returned to Estancia, where he attended the coronation at the fair.

President Garcia told newsmen this morning he is prepared for a break with Senate President Rodriguez and let the Nacionalista Party decide the presidential candidate of the party. The President met newsmen aboard the *Lapu-Lapu* on the way to Estancia, where he crossed the path of Vice-President Macapagal, who is stumping in Iloilo.

Apparently at the end of his patience, President Garcia said, "I am willing to go any length to preserve party unity, but if the realities are different, I am ready to confront them."

"If the party is divided, let it not be said that President Garcia was the cause of it," he added.

The President also: (1) defended the sale of the Doña vessels by the National Development Company; (2) branded Amang's white paper as an "old song" played on the same old phonographs; and (3) claimed as a "wild story" Rodriguez's charge that Boholanos have settled on 149 hectares of land in Bago Oshiro, Davao.

The President is scheduled to return to Manila tomorrow night after a two-day stump of Negros and Iloilo.

April 14.—**T**HE PRESIDENT sailed for Manila from Estancia, Iloilo, at 3 o'clock this morning. The boat sailed at full speed and entered Manila Bay shortly after six o'clock in the evening. However, the yacht slowed down in its approach of the breakwater and docked at Pier 3 at 8:30 p.m.

Earlier in the morning, at his suite at the *Lapu-Lapu*, the President conferred with Govs. Zulueta and Plaza and took up the political developments in their respective areas.

Gov. Zulueta reported to the President the lukewarm reception accorded Vice-President Diosdado Macapagal in Iloilo. He also recalled his tiff with the Liberal Party presidential candidate and vowed to fight Macapagal in the coming elections.

In the evening the President conferred with the six Manila councilors who joined him in his four-day stump to Negros Occidental and Iloilo. They were Councilors Alfredo Gomez, Vicente G. Cruz, Felicisimo Cabigao, Francisco Varona, Jr., Pablo Gener, and Francisco Gatmaitan.

The Manila aldermen took up with the President their pet projects and sought his support to help finance them.

President Garcia returned at 3:30 this evening from a four-day stump of Bacolod City and Estancia, Iloilo, where he sewed up the heavy sugar votes of West Visayas.

The President came in aboard the *RPS Lapu-Lapu* together with the First Lady and Govs. Jose C. Zulueta of Iloilo and D. O. Plaza of Agusan.

Heartened by the massive welcome accorded him in Bacolod City and in Estancia and Sara, Iloilo, hometown of House Majority Floor Leader Jose M. Aldeguer, the President expressed confidence he would sweep Iloilo and Negros Occidental in the coming presidential polls.

The President was deeply impressed by the big crowds which gathered to meet him in Sara and by the biggest fluvial parade mounted to meet the yacht *Lapu-Lapu* as it steamed to shore in Estancia.

April 15.—PRESIDENT Garcia today waited the whole day for his guest who did not come.

He had left his calendar open for his amity talks with Senate President Eulogio Rodriguez in accordance with the decision of the Nacionalista Party's executive committee last Monday. But Amang never came.

While Press Secretary Jose C. Nable insisted that Rodriguez did not snub the President, it was evident that the host, President Garcia, waited the whole day for his expected guest who never came.

President Garcia and Rodriguez were supposed to iron out conflicts in the list of disputed delegates to the primary or convention which will choose the NP presidential candidate.

The Chief Executive was in his bedroom and alerted all his aides to relay to him any report of the visit of Rodriguez.

Up to press time this evening Amang had not shown up at the Palace.

Earlier in the morning the President played golf at the Manila Golf Club to get into the swing of balls after a four-day slump in the Visayas.

Although he was at the Manila Golf Club, he had ordered his aides to relay immediately to him any report of Amang's decision to see him anywhere.

Before going to the golf course, the President also ordered his aides to lay a wreath at the tomb of President Roxas at the North Cemetery on the occasion of 13th anniversary of the latter's death.

The President also ordered an honor guard to keep vigil at the Roxas mausoleum.

**EXECUTIVE ORDERS, PROCLAMATIONS AND
ADMINISTRATIVE ORDERS**

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 743

**EXTENDING THE FOURTEENTH ANNUAL FUND
CAMPAIGN OF THE PHILIPPINE NATIONAL
RED CROSS**

WHEREAS, the period from February 14 to March 31, 1961, was set aside for the fourteenth annual fund campaign of the Philippine National Red Cross under Proclamation No. 703, dated September 16, 1960; and

WHEREAS, the campaign has been affected adversely by the failure of crops caused by the several successive typhoons, floods, and other major calamities in many areas;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, do hereby extend the fourteenth annual fund campaign of the Philippine National Red Cross up to April 30, 1961.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 28th day of March, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

015988

REPUBLIC ACTS

Enacted during the Fourth Congress of the Philippines
Third Session

H. No. 1908

[REPUBLIC ACT No. 2936]

AN ACT TO AMEND SECTION THREE OF REPUBLIC ACT NUMBERED SEVEN HUNDRED NINETY-THREE SO AS TO PERMIT THE GRANTEE VICENTE A. ARANETA A TEMPORARY PERMIT TO CONSTRUCT, INSTALL, ESTABLISH AND OPERATE PRIVATE FIXED POINT-TO-POINT AND PRIVATE BASED AND LAND MOBILE RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section three of Republic Act Numbered Seven hundred ninety-three is amended to read as follows:

"SEC. 3. This temporary permit shall continue to be in force during the time the government has not established similar service at places selected by the grantee and is made upon the express condition that the same shall be void unless the grantee completes the construction of at least two radio stations within two years from date of approval of this Act."

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2063

[REPUBLIC ACT No. 2937]

AN ACT GRANTING JORGE D. BAYONA A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A RADIO BROADCASTING STATION IN THE MUNICIPALITY OF LEGASPI, PROVINCE OF ALBAY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as of Act Numbered Three thousand eight hundred forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Act Numbered Three thousand nine hundred ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, and other applicable laws, not inconsistent with this Act, Jorge D. Bayona is hereby granted a franchise to construct, maintain and operate a radio broadcasting station in the Municipality of Legaspi, Province of Albay.

SEC. 2. This franchise shall continue for a period of twenty-five years from the date the said station shall be put in operation, and is granted upon the express condition that the same shall be void unless the construction of said station be begun within six months from the date of approval of this Act and be completed within two years from said date.

SEC. 3. This franchise is likewise made upon the express condition that the grantee shall contribute to the public welfare, shall assist in the functions of public information and education, shall conform to the ethics of honest enterprise, and shall not use his station for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 4. The grantee's radio broadcasting station shall not be put in actual operation until the Secretary of Public Works and Communications shall have allotted to the grantee the frequency and wave length to be used under this franchise and issued to the grantee a license for such use.

SEC. 5. A special right is reserved to the President of the Philippines in time of war, rebellion, public peril, or other national emergency and when public safety requires, to cause the closing of said station or to authorize the use and operation thereof by any department of the Government without compensating the grantee for the use of said station during the continuance of the national emergency.

SEC. 6. The grantee shall be liable to pay the same taxes, unless exempted therefrom, on his real estate, buildings, and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay.

The grantee shall further be liable to pay all other taxes under the National Internal Revenue Code by reason of this franchise.

SEC. 7. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the station of the grantee.

SEC. 8. The franchise hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 9. As a condition of the granting of this franchise, the grantee shall execute a bond in favor of the Government of the Philippines, in the sum of fifty thousand pesos, in form and with sureties satisfactory to the Secretary of Public Works and Communications, conditioned upon the faithful performance of the grantee's obligations hereunder during the first three years of the life of this franchise. If, after three years from the date of acceptance of this franchise, the grantee shall have fulfilled said obligations, or as soon thereafter as the grantee shall

have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Public Works and Communications.

SEC. 10. Acceptance of this franchise shall be given in writing within six months after approval of this Act. When so accepted by the grantee and upon the approval of the bond aforesaid by the Secretary of Public Works and Communications the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 11. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise, nor the rights and privileges acquired thereunder, to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this franchise may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or which hereafter may be enacted, and any person, firm, company, corporation or other commercial or legal entity to which this franchise is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 12. The grantee shall not require any previous censorship of any speech, play or other matter to be broadcast from his station; but if any such speech, play or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play or other matter: *Provided*, That the grantee, during any broadcast shall cut off from the air the speech, play or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral, and willful failure to do so shall constitute a valid cause for the cancellation of this franchise.

SEC. 13. This franchise shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 14. This Act shall take effect upon its approval. Enacted without Executive approval, June 19, 1960.

H. No. 2065

[REPUBLIC ACT No. 2938]

AN ACT GRANTING JORGE D. BAYONA A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE IN THE PROVINCE OF ALBAY AN AUDIO-PHONIC SYSTEM FOR THE BROADCASTING OF MUSICAL AND LITERARY PROGRAMS, INCLUDING NEWS AND ADVERTISEMENTS, TO ANY PART OF SAID PROVINCE, THROUGH WIRES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution and this Act, there is hereby granted to Jorge D. Bayona a franchise to construct, maintain and operate in the Province of Albay an audiophonic system for the broadcasting of musical and literary programs, including news and advertisements, to any part of said province, through wires, for a period of twenty-five years from the approval of this Act. The broadcasting station of the grantee shall be located in the City of Legazpi, same province.

SEC. 2. The subscribers to the said station shall be provided by the grantee, free of charge, with a loudspeaker each, upon deposit of a reasonable amount to answer for the cost thereof in case of loss or destruction imputable to the subscriber, the deposit to be refunded to the latter upon termination of the subscription and surrender of the loudspeaker in good condition: *Provided*, That all expenses for the installation of the loudspeaker and for the repair of any defect thereof or damage thereto not willfully caused by the subscriber shall be shouldered by the grantee.

SEC. 3. The right is hereby reserved to the Government of the Philippines, through the Public Service Commission or such other government agency as may hereafter be duly authorized, to fix the maximum rates or charges to be collected by the grantee.

SEC. 4. Subject to rules and regulations to be promulgated by the Secretary of Public Works and Communications, the grantee is authorized to erect poles on public thoroughfares and other public places for the laying of the necessary wires between his station and the houses of his subscribers.

SEC. 5. This franchise is granted upon the express condition that the same shall be void unless the construction of the audiophonic system of the grantee shall be begun within two years from the date of approval of this Act and be completed within three years from said date.

SEC. 6. A special right is hereby reserved to the President of the Philippines, in time of war, insurrection, public peril or other national emergency and when public safety requires, to cause the closing of the station of the grantee, or to authorize the use or possession thereof by any department of the Government without compensating the grantee for the use of said station during the continuance of the national emergency.

SEC. 7. In the event of any competing individual, partnership or corporation receiving from the Congress a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 8. The grantee shall hold the National Government and the provincial and municipal governments in Albay harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the audiophonic system of the grantee.

SEC. 9. The grantee shall keep an account of the gross receipts of the business transacted by him and shall furnish the Auditor General and the National Treasurer a copy of such account not later than the thirty-first day of January of each year for the preceding year. For the purpose of auditing the accounts rendered to the Auditor General and the National Treasurer, all the books and accounts of the grantee, or duplicates thereof, shall be subject to the official inspection of the Auditor General or his authorized representatives, and the audit and approval of such accounts by said officers shall be final and conclusive evidence as to the amount of said gross receipts, except that the grantee shall have the right to appeal to the courts under the terms and conditions provided by law.

SEC. 10. The grantee shall be liable to pay the same taxes on his real property, buildings, machinery and personal property as other persons or corporations are now or hereafter may be required by law to pay. The grantee shall further be liable to pay all other taxes imposable under the National Internal Revenue Code by reason of this franchise.

SEC. 11. The grantee shall not require any previous censorship of any speech, play, or other matter to be broadcast from his station; but if any such speech, play, or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play, or other matter: *Provided*, That the grantee, during any broadcast, may cut off from the wire the speech, play, or other matter being broadcast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 12. The grantee shall provide adequate public service time to enable the Government, through his broadcasting station, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use his station for the broadcasting of obscene or indecent language or speech, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage, or assist in subversive or treasonable acts.

SEC. 13. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise, nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge his business with that of any other person, company or corporation organized for the same purpose, without the previous approval of the Congress of the Philippines. Any person, firm, company, corporation or other commercial or legal entity to which this franchise

is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise has been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 14. Wherever in this Act the term "grantee" is used, it shall be held and understood to mean and represent Jorge D. Bayona, his representatives, successors or assigns.

SEC. 15. This franchise shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted to mean an exclusive grant of the privileges herein provided for.

SEC. 16. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2287

[REPUBLIC ACT NO. 2939]

AN ACT GRANTING GRACIANO BANOON A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF TANJAY, PROVINCE OF NEGROS ORIENTAL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Graciano Banogon, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and/or power for sale in the Municipality of Tanjay, Province of Negros Oriental.

SEC. 2. In the event that the grantee shall purchase and secure from the National Power Corporation electric heat and power, the National Power Corporation is hereby authorized to negotiate and transact for the benefit and in behalf of the public consumers with reference to rates.

SEC. 3. It is expressly provided that, in the event the Government should desire to maintain and operate for itself the system and the enterprise herein authorized, the grantee shall surrender his franchise and turn over to the Government all serviceable equipment therein at cost, less reasonable depreciation.

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2297

[REPUBLIC ACT No. 2940]

AN ACT TO GRANT THE MUNICIPALITY OF CATEEL, PROVINCE OF DAVAO, A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the Municipality of Cateel, Province of Davao, for a period of twenty-five years from the approval of this Act, the right, privilege and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and/or power for sale within the limits of the said municipality.

SEC. 2. In the event that the grantee shall purchase and secure from the National Power Corporation electric heat and power, the National Power Corporation is hereby authorized to negotiate and transact for the benefit and in behalf of the public consumers with reference to rates.

SEC. 3. This Act shall supersede Republic Act Numbered Thirteen hundred fifty-three, which latter Act is hereby repealed.

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2408

[REPUBLIC ACT No. 2941]

AN ACT GRANTING THE ESPERANZA ENTERPRISES, INC., A TEMPORARY PERMIT TO CONSTRUCT, ESTABLISH, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT, LAND BASED AND LAND MOBILE RADIO STATIONS AND WATER-BORNE RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to the Esperanza Enterprises, Inc., a temporary permit to construct, establish, maintain and operate in the Philippines, at such places as the grantee may select, subject to the approval of the Secretary of Public Works and Communications, private fixed point-to-point, land based and land mobile radio stations and water-borne radio stations, for the reception and transmission of wireless messages on radiotelegraphy or radiotelephony, each station to be provided with a radio transmitting apparatus and a radio receiving apparatus.

SEC. 2. The President of the Philippines shall have the power and authority to permit the location of said private fixed point-to-point, land based and land mobile radio stations and water-borne radio stations or any of them on lands of the public domain upon such terms as he may prescribe.

SEC. 3. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction of at least one of the said stations be begun within one year from the date of approval of this Act and be completed within two years from said date.

SEC. 4. The grantee shall not engage in domestic business of telecommunications in the Philippines without further special assent of the Congress of the Philippines, it being understood that the purpose of this temporary permit is to secure to the grantee the right to construct, establish, maintain and operate private fixed point-to-point, land based and land mobile radio stations and water-borne radio stations at such places within the Philippines as the interest of the grantee and of its trade and business may justify.

SEC. 5. The grantee shall be subject to the corporation laws of the Philippines now existing or which may hereafter be enacted.

SEC. 6. This temporary permit shall not take effect until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder, but the grantee may use the international distress frequency of five hundred kilocycles and the high distress frequency of eight thousand two hundred eighty kilocycles whenever necessary.

SEC. 7. No fees are chargeable, as the radio stations that may be established by virtue of this Act shall engage in communications regarding the grantee's business only.

SEC. 8. The grantee shall so construct and operate its radio stations as not to interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 9. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of its radio stations.

SEC. 10. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit, nor the rights or privileges acquired thereunder, to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, firm, company, or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or

other commercial or legal entity to which this temporary permit is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 11. A special right is hereby reserved to the President of the Philippines in time of war, insurrection, public peril, or other national emergency and when public safety requires, to cause the closing of the grantee's radio stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee during the continuance of the national emergency.

SEC. 12. Wherever in this temporary permit the term "grantee" is used, it shall be held and understood to mean the "Esperanza Enterprises, Inc.," its representatives, successors or assigns, unless the context indicates otherwise.

SEC. 13. This temporary permit shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 14. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2439

[REPUBLIC ACT No. 2942]

AN ACT GRANTING THE PURAKAN PLANTATION COMPANY A TEMPORARY PERMIT TO CONSTRUCT, ESTABLISH, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to the Purakan Plantation Company a temporary permit to construct, establish, maintain and operate in the Philippines, at such places as the grantee may select, subject to the approval of the Secretary of Public Works and Communications, private fixed point-to-point radio stations for the reception and transmission of wireless messages in radiotelegraphy or radiotelephony, each to be provided with a radio transmitting apparatus and a radio receiving apparatus.

SEC. 2. The President of the Philippines shall have the power and authority to permit the location of said private fixed point-to-point radio stations or any of them on lands of the public domain upon such terms and conditions as he may prescribe.

SEC. 3. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the

grantee, and is granted upon the express condition that the same shall be void unless the construction of at least one of the said stations be begun within one year from the date of approval of this Act and be completed within two years from said date.

SEC. 4. The grantee shall not engage in domestic business of telecommunications in the Philippines without further special assent of the Congress of the Philippines, it being understood that the purpose of this temporary permit is to secure to the grantee the right to construct, establish, maintain and operate private fixed point-to-point radio stations at such places within the Philippines as the interest of the grantee and of its trade and business may justify.

SEC. 5. The grantee shall be subject to the corporation laws of the Philippines now existing or which may hereafter be enacted.

SEC. 6. This temporary permit shall not take effect until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder, but the grantee may use the international distress frequency of five hundred kilocycles and the high distress frequency of eight thousand two hundred eighty kilocycles whenever necessary.

SEC. 7. No fees are chargeable, as the radio stations that may be established by virtue of this Act shall engage in communications regarding the grantee's business only.

SEC. 8. The grantee shall so construct and operate its radio stations as not to interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 9. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of its radio stations.

SEC. 10. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit, nor the rights or privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, firm, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred, or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 11. A special right is hereby reserved to the President of the Philippines in time of war, insurrection, public peril, or other national emergency and when public safety requires, to cause the closing of the grantee's

radio stations or to authorize the use or possession thereof by any department of the Government without compensating the grantee for the use of said stations during the continuance of the national emergency.

SEC. 12. Whenever in this permit the term "grantee" is used, it shall be held and understood to mean "Purakan Plantation Company," its representatives, successors or assigns, unless the context indicates otherwise.

SEC. 13. This temporary permit shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted to mean as an exclusive grant of the privileges herein provided for.

SEC. 14. This Act shall take effect upon its approval. Enacted without Executive approval, June 19, 1960.

H. No. 2442

[REPUBLIC ACT No. 2943]

AN ACT GRANTING THE FEATI INSTITUTE OF TECHNOLOGY A FRANCHISE FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A RADIO AND TELEVISION BROADCASTING STATION IN THE CITY OF MANILA FOR EDUCATIONAL PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as of Act Numbered Three thousand eight hundred forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Act Numbered Three thousand nine hundred ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, and other applicable laws, not inconsistent with this Act, the Feati Institute of Technology is hereby granted a franchise to construct, maintain and operate, for educational purposes and in the interest of the public, a radio and television broadcasting station in the City of Manila.

SEC. 2. This franchise shall continue for a period of twenty-five years from the date the said station shall start to operate, subject to the express condition that same shall be void unless the construction of said station be begun within six months from the date of approval of this Act and be completed within two years from said date.

SEC. 3. As a condition of the granting of this franchise, the grantee shall execute a bond in favor of the Government of the Philippines, in the sum of fifty thousand pesos, in form and with sureties satisfactory to the Secretary of Public Works and Communications, conditioned upon the faithful performance of the grantee's obligations hereunder during the first three years of the life of this franchise. If, after four years from the date of acceptance of this franchise, the grantee shall have fulfilled said

obligations, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Public Works and Communications.

SEC. 4. This franchise is also granted upon the express condition that the grantee shall contribute to the public and national welfare, assist in public information and education, abide by the accepted ethics and practices of honest enterprise, and shall not use its station for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 5. Until the Secretary of Public Works and Communications shall have assigned the grantee the frequency and wave length to be used under this franchise and issued to the grantee a license for such use, the grantee's station shall not be put in actual operation.

SEC. 6. The grantee's broadcasting station shall be so constructed and operated and the frequency and wave length so selected as to avoid interference with existing radio and television stations and to permit the expansion of the grantee's services.

SEC. 7. In time of war, rebellion, public peril, or other national emergency and when public safety requires, a special right is reserved to the President of the Republic of the Philippines to cause the closing of the said station or to authorize the use and operation thereof by any department of the government without compensating the grantee for the use of said station during the continuance of the national emergency.

SEC. 8. Unless exempted therefrom, the grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay.

SEC. 9. The franchise hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 10. Within six months after the approval of this Act, acceptance of this franchise shall be given in writing by the grantee. The grantee shall be empowered to exercise the privileges granted thereby, when so accepted.

SEC. 11. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights and privileges acquired thereunder to any person, firm, company, or corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the prior approval of the Congress of the Philippines. Any corporation to which this franchise may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this franchise is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this franchise as fully and completely and

to the same extent as if the franchise had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 12. This franchise shall not be interpreted as an exclusive grant of the privileges provided for herein.

SEC. 13. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2660

[REPUBLIC ACT No. 2944]

AN ACT TO AMEND SECTION TWO OF REPUBLIC ACT NUMBERED FOURTEEN HUNDRED FORTY-THREE, ENTITLED "AN ACT GRANTING THE VICTORIAS MILLING CO., INC., A TEMPORARY PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT AND LAND-BASED AND LAND MOBILE RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES," SO AS TO EXTEND THE PERIOD WITHIN WHICH CONSTRUCTION OR INSTALLATION OF SAID STATIONS SHOULD BE BEGUN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section two of Republic Act Numbered Fourteen hundred forty-three is amended to read as follows:

"SEC. 2. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction or installation of said station be begun not later than June thirtieth, nineteen hundred sixty-one."

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2709

[REPUBLIC ACT No. 2945]

AN ACT GRANTING THE ASSOCIATED BROADCASTING CORPORATION A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING AND TELEVISION STATIONS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, the Associated Broadcasting Corporation is hereby granted a franchise, which shall continue in force during the time that the Government has not established similar service at the places selected by the grantee, to construct, maintain and operate, for commercial purposes and in the public

interest, radio broadcasting and television stations in the Philippines: *Provided*, That this franchise shall be void unless the construction of at least one radio broadcasting station or one television station be begun within two years from the date of approval of this Act, and be completed within four years from said date: *Provided, further*, That the grantee shall provide adequate public service time to enable the Government, through the said radio broadcasting and television stations, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting and/or telecasting of obscene or indecent language, speech, act or scene, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage, or assist in subversive or treasonable acts.

SEC. 2. Such provisions of Act Numbered Thirty-eight hundred forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Act Numbered Thirty-nine hundred ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, as are applicable to radio broadcasting stations shall be applied, as far as practicable, to the television stations referred to in Section one.

SEC. 3. As a condition of the granting of this franchise, the grantee shall execute a bond in favor of the Government of the Philippines, in the sum of fifty thousand pesos, in form and with sureties satisfactory to the Secretary of Public Works and Communications, conditioned upon the faithful performance of the grantee's obligations hereunder during the first three years of the life of this franchise. If, after four years from the date of acceptance of this franchise, the grantee shall have fulfilled said obligations, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Public Works and Communications.

SEC. 4. Acceptance of this franchise shall be given in writing within six months after the approval of this Act. When so accepted by the grantee and upon approval of the bond aforesaid by the Secretary of Public Works and Communications the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 5. The grantee's radio broadcasting and television stations shall not be put in actual operation until the Secretary of Public Works and Communications shall have allotted to the grantee the frequency and wave lengths to be used under this franchise and issued to the grantee a license for such use.

SEC. 6. In the event of any competing individual, partnership or corporation receiving from the Congress a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become a part of the terms

hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 7. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay.

(b) The grantee shall further be liable to pay all other taxes that may be imposed by the National Internal Revenue Code by reason of this franchise.

SEC. 8. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries whether to property or to persons, caused by the construction or operation of the stations of the grantee.

SEC. 9. The franchise hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 10. In the event the Government should desire to maintain and operate for itself any or all of the stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 11. A special right is reserved to the President of the Philippines in time of war, rebellion, public peril, or other national emergency, when public safety requires, to cause the closing of said stations or to authorize the use and operation thereof by any department of the Government without compensation to the grantee for the use of said stations during the continuance of the national emergency.

SEC. 12. The grantee shall not require any previous censorship of any speech, play, act or scene or other matter to be broadcast and/or telecast from its stations; but if any such speech, play, act or scene or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play, act or scene or other matter: *Provided*, That the grantee, during any broadcast and/or telecast, shall cut off from the air the speech, play, act or scene or other matter being broadcast and/or telecast, if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral, and willful failure to do so shall constitute a valid cause for the cancellation of this franchise.

SEC. 13. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the previous approval of the Congress of the Philippines. Any corporation to which this franchise is sold, transferred or assigned, shall be subject to all the conditions, terms, restrictions and limitations of this franchise as fully and completely and

to the same extent as if the franchise had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 14. Whenever in this franchise the term "grantee" is used, it shall be held and understood to mean "Associated Broadcasting Corporation," its representatives, successors or assigns, unless the context indicates otherwise.

SEC. 15. This franchise shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 16. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2731

[REPUBLIC ACT No. 2946]

AN ACT GRANTING RAFAEL C. AQUINO A FRANCHISE TO INSTALL, OPERATE AND MAINTAIN A TELEPHONE SYSTEM IN THE PROVINCE OF SORSOGON.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the conditions established in this Act and the provisions of Commonwealth Act Numbered One hundred and forty-six, as amended, and of the Constitution, applicable thereto, there is hereby granted to Rafael C. Aquino, hereinafter called the grantee, his successors or assigns, for a period of fifty years from the approval of this Act, the right and privilege to construct, maintain and operate in the Province of Sorsogon, hereinafter referred to as the province, a telephone system to carry on the business of the electrical transmission of conversations and signals in said province, with main station at the provincial capital. For this purpose, the grantee is hereby authorized to use all streets and public thoroughfares of the province for the construction, maintenance and operation of all apparatus, conductors, and appliances necessary for the electrical transmission of conversations and signals, to erect poles, string wires, build conduits, lay cables, and to construct, maintain, and use such other approved and generally accepted means of electrical conduction in, on, over, or under the public roads, highways, lands, bridges, streets, lanes, and sidewalks of said province, and overhead or underground lines or on the surface of the ground as may be necessary and best adopted to said transmission.

SEC. 2. All poles erected and all conduits constructed or used by the grantee shall be located in places designated by the grantee with the approval of the provincial board of the province: *Provided*, That all poles erected and used by the grantee or his successors or assigns shall be of such appearance as not to disfigure the streets, and the wires and cables carried by said poles and the underground cables shall be strung and laid in accordance with professional standards approved by the Public Service Commission; and said poles shall be of such height as to maintain the wires and cables stretched on the same

at a height of at least fifteen feet above the level of the ground, and said wires and cables shall be so placed as not to imperil the public safety, in accordance with a plan approved by the Public Service Commission: *Provided, further*, That whenever twenty-five or more pairs of wires or other conductors are carried on one line of poles in any place of the poblacion of said province, said wires or conductors shall be placed in one cable, and whenever more than eight hundred pairs of wires or other conductors are carried on one line of poles, said wires or conductors shall be placed underground by the grantee, his successors or assigns, whenever ordered to do so by the Public Service Commission.

SEC. 3. For the purpose of erecting and placing the poles or other supports of such wires or other conductors or of laying and maintaining underground said wires, cables or other conductors, it shall be lawful for the grantee, his successors or assigns, to make excavations or lay conduits in any of the public places, highways, streets, alleys, lanes, avenues, sidewalks or bridges in the Province of Sorsogon: *Provided, however*, That any public place disturbed, altered or changed by reason of the erection of poles or other supports, or the laying underground of wires or other conductors, or of conduits shall be repaired and restored to the satisfaction of the engineer of the province, removing from the same all rubbish, dirt, refuse, or other material which may have been placed there or taken up in the erection of said poles or the laying of said underground conduits, leaving them in as good conditions as they were before the work was done.

SEC. 4. Whenever any person has obtained permission to use any of the streets of said province for the purpose of removing any building or in the prosecution of any provincial or municipal work or for any other cause whatsoever, making it necessary to raise or remove any of said wires or conduits which may obstruct or hinder the prosecution of said work, the said grantee, upon notice by the provincial board of the province served upon said grantee at least forty-eight hours in advance, shall raise or remove any of said wires or conduits which may hinder the prosecution of such work or obstruct the removal of said building, so as to allow the free and unobstructed passage of said building and the free and unobstructed prosecution of said work, and the person or entity at whose request the wires or poles or other structures have been removed, shall pay one-half of the actual cost of replacing the poles or raising the wires and other conductors or structures. The notice shall be in the form of a resolution duly adopted by the provincial board of the province served upon the grantee or his duly authorized representatives or agent by a person competent to testify as witness in a civil action, and in case of refusal or failure of the grantee to comply with such notice, the provincial governor with the proper approval of the provincial board of the province first had, as the case may be, shall order such wires or conduits to be raised or removed at the expense of the grantee, for the purposes aforesaid.

SEC. 5. All apparatus and appurtenances used by the grantee, his successors or assigns, shall be modern and

first class in every respect, and all telephone lines or installations used, maintained and operated in connection with this franchise by the grantee, his successors or assigns, shall be kept and maintained at all times in a satisfactory manner, so as to render an efficient and adequate telephone service, and it shall be the further duty of said grantee, his successors or assigns, whenever required to do so by the Public Service Commission, to modify, improve, and change such telephone system for the electrical transmission of conversations and signals by means of electricity in such manner and to such extent as the progress of science and improvements in the method of electrical transmission of conversations and signals by means of electricity may make reasonable and proper.

SEC. 6. The grantee, his successors or assigns, shall keep a separate account of the gross receipts of his telephone business, and shall furnish the Auditor General and the Treasurer of the Philippines a copy of such account not later than the thirty-first day of July of each year for the twelve months preceding the first day of July.

SEC. 7. The grantee, his successors or assigns, shall be liable to pay the same taxes on their real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition, the grantee, his successors or assigns, shall pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in Section six of this Act, one *per centum* of all gross receipts of the telephone business transacted under this franchise by the grantee, his successors or assigns, and the said percentage shall be in lieu of all taxes on this franchise or its earnings.

SEC. 8. Within sixty days from the approval of this Act, the grantee shall file with the Public Service Commission his application for a certificate of convenience and public necessity. In case of failure to make said application within the period established, this franchise shall become null and void.

SEC. 9. The grantee shall not commence any construction whatever pursuant to this franchise without first obtaining a certificate of convenience and public necessity from the Public Service Commission of the form and character provided for in Commonwealth Act Numbered One hundred and forty-six, as amended, specifically authorizing such construction. The grantee shall not exercise any right or privilege under this franchise without first having obtained such certificate of convenience and public necessity from the Public Service Commission. The Public Service Commission shall have the power to issue such certificate of convenience and public necessity whenever it shall, after hearing, determine that such construction or such exercise of the rights and privileges under this franchise is necessary and proper for the public convenience, and the Commission shall have the power in issuing such certificate to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require, and such certificate shall state the date on

which the grantee shall commence construction and the period within which the work shall be completed. In order to avail himself of the rights granted by such certificate of convenience and public necessity, the grantee shall file with the Public Service Commission, within such period as said Commission shall fix, his written acceptance of the terms and conditions of this franchise and of the certificate, together with the document evidencing the fact that the deposit required in Section ten has been made. In the event that the grantee shall not commence the telephone service referred to in the certificate obtained and filed as herein provided within such period as the Public Service Commission shall have fixed, said Commission may declare said certificate null and void and the deposit made pursuant to Section ten of this Act forfeited to the National Government unless the grantee shall have been prevented from doing so by fortuitous cause or *force majeure*, usurped or military power, martial law, riot, uprising, or other inevitable cause: *Provided, however*, That if the grantee shall have been prevented by any of said causes from commencing the telephone service within the period specified, the time during which he shall have been so prevented shall be added to said period: *Provided, further*, That failure on the part of the grantee to accept the conditions of this franchise and those imposed in the certificate of convenience and public necessity shall automatically void this franchise.

SEC. 10. Upon the written acceptance of the terms and conditions of this franchise, the grantee shall deposit with the Treasurer of the Philippines one thousand pesos, or negotiable bonds of the Government of the Philippines or other securities approved by the Secretary of Public Works and Communications, of the face value of one thousand pesos, as an earnest of good faith in accepting this franchise and a guaranty that, within six months from the date of the granting by the Public Service Commission of a certificate of convenience and public necessity authorizing the construction and operation by the grantee of a telephone service in the Province of Sorsogon, the grantee, his successors or assigns, will be completely provided with the necessary equipment and ready to begin operation in accordance with the terms of this franchise: *Provided*, That if the deposit is made in money the same shall be deposited at interest in some interest-paying bank approved by the Secretary of Public Works and Communications, and all interest accruing and due on such deposit shall be collected by the Treasurer of the Philippines and paid to the grantee, his successors or assigns, on demand: *And provided, further*, That if the deposit made with the Treasurer of the Philippines be in negotiable bonds of the Government of the Philippines or other interest-bearing securities approved by the Secretary of Public Works and Communications, the interest on such bonds or securities shall be collected by the Treasurer of the Philippines and paid over to the grantee, his successors or assigns, on demand.

Should the said grantee, his successors or assigns, for any other cause than the act of God, the public enemy, usurped or military power, martial law, riot, civil com-

motion, or inevitable cause, fail, refuse, or neglect to begin within twelve months from the date of the granting of said certificate of convenience and public necessity, the business of transmitting messages by telephone, or fail, refuse, or neglect to be fully equipped and ready to operate, within twelve months from the date of the granting of said certificate of convenience and public necessity, the telephone service in the Province of Sorsogon applied for by the grantee according to the terms of this franchise, then the deposit prescribed by this section to be made with the Treasurer of the Philippines, whether in money, bonds or other securities, shall become the property of the National Government as liquidated damages caused to such Government by such failure, refusal, or neglect, and thereafter no interest on said bonds or other securities deposited shall be paid to the grantee, his successors or assigns. Should the said grantee, his successors or assigns, begin the business of transmitting messages by telephone and be ready to operate according to the terms of this franchise the telephone service in the Province of Sorsogon within twelve months from the date of the granting of said certificate of convenience and public necessity, then and in that event the deposit prescribed by this section shall be returned by the National Government to the grantee, his successors or assigns, upon recommendation of the Public Service Commission, as soon as the telephone service in said province applied for by the grantee has been installed in accordance with the terms of this franchise: *Provided, however,* That all the time during which the grantee, his successors or assigns, may be prevented from carrying out the terms and conditions of this franchise by any of said causes shall be added to the time allowed by this franchise for compliance with its provisions.

SEC. 11. The books and accounts of the grantee, his successors or assigns, shall always be open to the inspection of the provincial auditor or his authorized representatives, and it shall be the duty of the grantee to submit to the Auditor General quarterly reports in duplicate showing the gross receipts and the net receipts for the quarter past and the general condition of the business.

SEC. 12. The rights herein granted shall not be exclusive, and the right and power to grant to any corporation, association, or person other than the grantee franchise for the telephone or electrical transmission of messages or signals shall not be impaired or affected by the granting of this franchise: *Provided,* That the poles erected, wires strung or cables or conduits laid by virtue of any franchise for telephone, or other electrical transmission of messages and signals granted subsequent to this franchise shall be so placed as not to impair the efficient transmission of conversations or signals under this franchise by means of poles erected, wires strung, or cables or conduits actually laid and in existence at the time of the granting of said subsequent franchise: *And provided, further,* That the Public Service Commission, after hearing both parties interested, may compel the grantee of this franchise or his successors or assigns to remove, relocate, or replace his poles, wires or conduits; but in such case

the reasonable cost of the removal, relocation, or replacement shall be paid by the grantee of the subsequent franchise or his successors or assigns to the grantee of this franchise or his successors or assigns.

SEC. 13. The grantee, his successors or assigns, shall hold the national, provincial, city and municipal governments harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the telephone or other electrical transmission system of the said grantee, his successors or assigns.

SEC. 14. The rates for the telephone service, flat rates as well as measured rates, shall be subject to the approval of the Public Service Commission.

The monthly rates for telephones having a metallic circuit within the limits of the province shall also be approved by the Public Service Commission.

SEC. 15. The grantee shall not, without the previous and explicit approval of the Congress of the Philippines, directly or indirectly, transfer, sell, or assign this franchise to any person, association, company, or corporation or other mercantile or legal entity.

SEC. 16. The grantee may install, maintain, operate, purchase or lease such telephone stations, lines, cables or system, as is, or are, convenient or essential to efficiently carry out the purpose of this franchise: *Provided, however,* That the grantee, his successors or assigns, shall not, without the permission of the Public Service Commission first had, install, maintain, operate, purchase or lease such stations, lines, cables or systems.

SEC. 17. The Philippine Government shall have the privilege, without compensation, of using the poles of the grantee to attach one ten-pin, crossarm, and to install, maintain and operate wires of its telegraph system thereon: *Provided, however,* That the Bureau of Telecommunications shall have the right to place additional crossarms and wires on the poles of the grantee by paying a compensation, the rate of which is to be agreed upon by the Director of Telecommunications and the grantee: *Provided, further,* That in case of disagreement as to rate of contract rental, same shall be fixed by the Public Service Commission. The Province of Sorsogon shall also have the privilege, without compensation, of using the poles of the grantee, to attach one standard crossarm, and to install, maintain and operate wires of a local police and fire alarm system, but the wires of such telegraph lines, police or fire alarm system shall be placed and strung in such manner as to cause no interference with or damage to the wires of the telephone service of the grantee.

SEC. 18. The grantee shall purchase the property used by the Government of the Province of Sorsogon for the operation of a similar service in the province and the provincial government shall sell said property together with all rights and privileges now enjoyed by said provincial government, at the price agreed by the grantee and the provincial board. In case of disagreement as to the purchase price, the Public Service Commission is

authorized to act as referee and to determine the reasonable price at which said property shall be conveyed after hearing both parties, and its decision shall be final.

SEC. 19. It is expressly provided that in the event that the Philippine Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender his franchise and will turn over to the Government said system and all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 20. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2772

[REPUBLIC ACT NO. 2947]

AN ACT GRANTING MR. EDUARDO FIGUERAS OF 22 GILMORE AVENUE, QUEZON CITY, A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING STATIONS, STATIONS FOR TELEVISION AND TELEMURAL RECEIVING SETS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, Mr. Eduardo Figueras of 22 Gilmore Ave., Quezon City, is hereby granted a franchise to construct, maintain and operate for educational and commercial purposes and in the public interest, radio broadcasting stations, stations for television and telemural receiving sets in the Philippines with the corresponding microwave links: *Provided*, That this franchise shall be void unless the construction of at least one radio broadcasting station or one television station be begun within two years from the date of the approval of this Act, and be completed within four years from said date: *Provided, further*, That the grantee shall contribute to the public welfare; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprises; and shall not use his stations for the broadcasting and/or telecasting of obscene or indecent language, speech, act or scene, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 2. Such provisions of Act Numbered Thirty-eight hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Act Numbered Thirty-nine hundred and ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred and forty-six, known as the Public Service Act, and their amendments, as are applicable to radio broadcasting stations shall be applied, as far as practicable, to the radio broadcasting and television stations referred to in Section one.

SEC. 3. The grantee shall execute a bond in favor of the Government of the Philippines in the sum of fifty thousand pesos to guaranty for the faithful compliance and fulfillment of the grantee's obligations hereunder during the first three years of the life of this franchise. If, after three years from the date of the approval of this franchise, the grantee shall fulfill said obligations, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Public Works and Communications.

SEC. 4. In the event of any competing individual, partnership or corporation receiving from the Congress a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto*, become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said completing individual, partnership or corporation.

SEC. 5. The grantee shall be liable to pay the same taxes on his real estate, buildings and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay. The grantee shall further be liable to pay all other taxes provided for in the National Internal Revenue Code by reason of this franchise.

SEC. 6. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public peril or other national emergency and when public safety requires, to cause the closing of the grantee's radio broadcasting and television station or stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee for the use of said stations during the continuance of the national emergency.

SEC. 7. The grantee shall not require any previous censorship of any speech, play, act or scene or other matter to be broadcast and/or telecast from his stations; but if any such speech, play, act or scene or other matter should constitute a violation of the law or infringement of private right, the grantee shall be free from any liability, civil or criminal, for such speech, play, act or scene or other matter: *Provided*, That the grantee during any broadcast and/or telecast, may cut off from the air the speech, play, act or scene or other matter being broadcast and/or telecast if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 8. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise, nor the rights or privileges acquired thereunder, to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this franchise is sold, transferred or assigned shall be subject to all the conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise has been orig-

inally granted to said person, firm, company, corporation or other commercial or legal entity.

SEC. 9. This franchise shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 10. This Act shall take effect upon its approval.

Enacted without Executive Approval, June 19, 1960.

H. No. 2795

[REPUBLIC ACT NO. 2948]

AN ACT GRANTING THE MANILA PENCIL COMPANY, INC., A TEMPORARY PERMIT TO CONSTRUCT, ESTABLISH, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT, LAND-BASED AND LAND MOBILE RADIO STATIONS AND WATER-BORNE RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to the Manila Pencil Company, Inc., a temporary permit to construct, establish, maintain and operate in the Philippines, at such places as the grantee may select, subject to the approval of the Secretary of Public Works and Communications, private fixed point-to-point, land-based and land mobile radio stations and water-borne radio stations, for the reception and transmission of wireless messages on radiotelegraphy or radiotelephony, each station to be provided with a radio transmitting apparatus and a radio receiving apparatus.

SEC. 2. The President of the Philippines shall have the power and authority to permit the location of said private fixed point-to-point, land-based and land mobile radio stations and water-borne radio stations or any of them on lands of the public domain upon such terms as he may prescribe.

SEC. 3. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction of at least one of the said stations be begun within one year from the date of approval of this Act and be completed within two years from said date.

SEC. 4. The grantee shall not engage in domestic business of telecommunications in the Philippines without further special assent of the Congress of the Philippines, it being understood that the purpose of this temporary permit is to secure to the grantee the right to construct, establish, maintain and operate private fixed point-to-point land-based and land mobile radio stations and water-borne radio stations in such places within the Philippines as the interest of the grantee and of its trade and business may justify.

SEC. 5. The grantee shall be subject to the corporation laws of the Philippines now existing or which may hereafter be enacted.

SEC. 6. This temporary permit shall not take effect until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder, but the grantee may use the international distress frequency of five hundred kilocycles and the high distress frequency of eight thousand two hundred eighty kilocycles whenever necessary.

SEC. 7. No fees are chargeable, as the radio stations that may be established by virtue of this Act shall engage in communications regarding the grantee's business only.

SEC. 8. The grantee shall so construct and operate its radio stations as not to interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 9. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands, or action arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of its radio stations.

SEC. 10. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit, nor the rights or privileges acquired thereunder, to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, firm, company, or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereunder enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 11. A special right is hereby reserved to the President of the Philippines in time of war, insurrection, public peril, or other national emergency and when public safety requires, to cause the closing of the grantee's radio stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee during the continuance of the national emergency.

SEC. 12. Whenever in this permit the term "grantee" is used, it shall be held and understood to mean "Manila Pencil Company, Inc.," its representatives, successors or assigns, unless the context indicates otherwise.

SEC. 13. This temporary permit shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privileges herein provided.

SEC. 14. This Act shall take effect upon its approval.

Enacted without Executive Approval, June 19, 1960.

H. No. 2873

[REPUBLIC ACT No. 2949]

AN ACT GRANTING SURIGAO ELECTRIC COMPANY,
INCORPORATED, A FRANCHISE TO INSTALL,
OPERATE AND MAINTAIN AN ELECTRIC
LIGHT, HEAT AND POWER SYSTEM IN THE
MUNICIPALITY OF BISLIG, PROVINCE OF
SURIGAO.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Subject to the conditions established in this Act and the provisions of Act Numbered Thirty-one hundred and eight and its amendments, applicable thereto, there is hereby granted to Surigao Electric Company, Incorporated, a corporation duly organized and existing under the laws of the Philippines, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain and operate an electric light, heat and power system, for the purpose of generating and distributing electric light, heat and power for sale within the limits of the Municipality of Bislig, Province of Surigao, Philippines. The grantee shall further have the right and privilege to install, lay and maintain on all streets, public thoroughfares, bridges and public places within said limits, poles, conductors, interrupters, transformers, cables, wires and other overhead appliances, and all other necessary apparatus and appurtenances for the furnishing and distribution of electric current and to supply, sell and furnish such current to any person, corporation or public or private concern within said limits for provincial, municipal, domestic or manufacturing uses and for any other use to which electricity may be put, and to charge and collect a schedule of prices and conventional sets for the use of the same: *Provided*, That this franchise shall not take effect until the grantee shall have obtained from the Public Service Commission a certificate showing the public necessity and convenience of the same, in accordance with the purpose of subsection (i) of Section fifteen of Act Numbered Thirty-one hundred and eight, as amended, and shall have filed such certificate with the Secretary of Public Works and Communications upon accepting this franchise: *And provided, further*, That if the grantee does not file the proper application for said certificate with the Public Service Commission within six months from the date of the approval of this Act, this franchise shall become null and void.

SEC. 2. The poles erected by the grantee shall be of such a height as to maintain the wires stretched on the

same at a distance of at least twenty feet above the level of the ground, and shall be of such appearance as not to disfigure the streets, and shall be placed with due regard for the public safety so as not to be a danger to the same, in accordance with a plan approved by the provincial or municipal authorities concerned, represented by the provincial governor or the municipal mayor, as the case may be, and said grantee shall supply electric power, heat and light to any applicant for the same within fifteen days after the date of his application and as between such applicant and other applicants, in the order of the date of his application, up to the limit of the capacity of the plant of said grantee, to be determined by the electrical engineer of the Public Service Commission on the application of said grantee, and should the demand for electric power, heat and light at any time increase beyond the capacity of the plant of said grantee to supply the same, the capacity of the plant shall be increased by said grantee to meet such demand, in accordance with the decision of the Public Service Commission or its legal successors: *Provided*, That in case the point at which the electric light, heat, or power to be supplied is more than thirty meters from the lines or wires operated by said grantee, the latter shall not be obliged to furnish said service.

SEC. 3. All apparatus and appurtenances used by the grantee shall be modern and first class in every respect, and said wires shall be insulated and carefully connected and fastened so as not to come in direct contact with any object through which a ground could be formed, and shall be stretched so as not to interfere with free use of said streets and public thoroughfares nor cause any injury to the public, or danger of fire or damage and inconvenience to the owners of the property: *Provided*, That in the maintenance and operation of its plant and system for the transmission and distribution of electric current, the grantee shall always be subject to such reasonable regulations as the Municipal Council of Bislig and the Provincial Board of Surigao may promulgate in the premises and also to the regulations prescribed by the National Electrical Code of America: *Provided*, That the grantee shall, whenever the Congress of the Republic of the Philippines, upon recommendation of the Public Service Commission or its legal successor, so as directs, place said wires in underground pipes or conduits at its own expense and without any cost and prejudice to the municipality above-mentioned.

SEC. 4. Whenever it shall be necessary in the erection of said poles to take up any portion of the sidewalks or dig up the ground of the public streets or thoroughfares, then the said grantee shall, after said poles are erected, without any delay replace said sidewalks in the proper

manner or arrange said streets or public thoroughfares removing from the same all rubbish, dirt, refuse or other materials which may have been placed there, taken up or dug up in the erection of said poles, leaving them in as good condition as they were before the work was done; and whenever it shall become necessary, by reason of the extension of streets or plazas as determined upon by the municipal council of the municipality above-mentioned to change the location of such poles, such change shall be made by the grantee, its successors or assigns, at their expense without delay, and said poles shall be placed where directed by said provincial board or said municipal council.

SEC. 5. Whenever any person has obtained permission to use any of the streets or public thoroughfares of the municipality above-mentioned for the purpose of removing any building or in the prosecution of any municipal work or for any just cause whatsoever, making it necessary to raise or remove any of said poles or electric wires which may obstruct the removal of said building so as to allow the free and unobstructed prosecution of said work, the person or entity at whose request the building has been moved or the construction undertaken, shall pay one-half of the actual cost of removing or raising and of replacing the poles, wires and other overhead or underground conductors. The notice shall be served in the usual form, and in case of refusal or failure of the grantee to comply with such notice, the municipal mayor, with the proper approval of the municipal council first had, shall order such poles or wires to be raised or removed at the expense of said grantee, for the purpose aforesaid: *Provided, however,* That the grantee may appeal from any such decision to the Provincial Board of Surigao whose decision shall be final.

SEC. 6. The grantee shall be liable to the municipality above-named for any injury arising from any claims caused by accidents to person or property by reason of the construction under this franchise or of any neglect or omission to keep the said poles and wires in a safe condition.

SEC. 7. Said grantee shall file its written acceptance of this franchise with the Secretary of Public Works and Communications within one hundred and eighty days from the date when he obtained the certificate required by Section one of this Act and shall commence work under the supervision and subject to the approval of the electrical engineer of the Public Service Commission, in accordance with the plan, specifications, and estimates previously approved by the Public Service Commission, within six months' time from and after the date of filing such acceptance, unless prevented by an act of God, or *force majeure*,

usurped or military power, martial law, riot or civil commotion or other inevitable cause, and shall complete the system and have the same in operation within eighteen months from the date of such acceptance, and shall thereafter maintain a first-class electric light, heat and power service: *Provided*, That in consideration of the franchise hereby granted, the grantee shall pay quarterly into the municipal treasury of the municipality above-named one and one-half *per centum* of the gross earnings of its electrical business during the life of this franchise, and said tax shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial, city or national now or in the future, on its buildings, poles, wires, insulators, transformers, installations, conductors, and accessories, placed in and over and under all public or private property, streets, bridges and public squares, and on its franchise, rights, privileges, receipts revenues and profits, for which taxes the grantee is hereby expressly exempted.

SEC. 8. Upon the acceptance of this franchise as provided in the preceding section, the grantee shall deposit in the National Treasury or with any of its agents in the Province of Surigao one thousand pesos or negotiable bonds of the Republic of the Philippines or other securities approved by the Secretary of Public Works and Communications, of the face value of one thousand pesos, as an earnest of good faith and a guarantee that it will begin the electric light, heat and power business and may be completely provided with the necessary equipment therefor and ready to begin operation in accordance with the terms of this franchise: *Provided, however*, That if such deposit is in cash, it may be made with some official depository of the Government in the name of the grantee and subject to the order of the National Treasurer, who shall retain the evidence of the deposit so made. In this case, as well as in the case of the deposit being made in negotiable bonds or other securities, as provided in this section, the interest of the cash deposit or of the bonds or securities deposited, if any, shall belong to the grantee.

In case such grantee shall fail, refuse or neglect, unless prevented by fortuitous cause or *force majeure*, public enemy, usurped or military power, martial law, riot, civil commotion or other inevitable cause, to commence the work for the electric light, heat and power service within six months from the date of acceptance of this franchise, or shall fail to provide the necessary equipment and be ready to operate within eighteen months after the date of such acceptance, in accordance with the terms of this franchise, then the deposit prescribed in this section and in the possession of the National Treasurer, whether in cash,

bonds or other securities, shall be forfeited to the Provincial Government of Surigao, as damage for the breach of implied contract involved in the acceptance of this franchise, and this franchise shall be null and void. In case the grantee begins to operate the electric light, heat and power service, and is ready for operation under this franchise, within the time limits specified, the deposit provided for in this section shall, upon recommendation by the Public Service Commission or its legal successor, be returned by the National Treasurer to said grantee: *Provided*, That the time during which such grantee has been prevented by any of the causes above referred to from carrying out the terms conditions of this franchise shall be added to the time granted by this franchise for the fulfillment of its conditions.

SEC. 9. The municipality above-named shall have the privilege, without compensation, of using the poles of the grantee for the purpose of installing, maintaining and operating the police telephone and alarm system, but the wires of such telephone and alarm system shall be placed and stretched in such manner as to cause no interference with or damage to the wires of the electric service of the grantee.

SEC. 10. The grantee is forbidden to issue stock or bonds under this franchise except in exchange for actual cash or for property at a fair valuation equal to the par value of the stock or bonds issued and upon prior authority of the Public Service Commission. Nor shall said grantee declare stock or bond as dividend.

SEC. 11. The books and accounts of the grantee shall always be open to the inspection of the Provincial Treasurer of Surigao or his authorized representative, and it shall be the duty of the grantee to submit to the provincial treasurer quarterly reports in duplicate showing the gross receipts and the net receipts for the past quarter and the general condition of the business, one of which shall be forwarded by the provincial treasurer to the Auditor General who shall keep the same on file.

SEC. 12. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise, nor the rights or privileges acquired thereunder to any person, without the approval of the Congress of the Philippines first had. Any person, natural or juridical, to which this franchise may be sold, transferred or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person to which this franchise is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to such person: *Pro-*

vided, That in case of any national emergency affecting and endangering the public safety and order, the Republic of the Philippines shall have the right to take possession of the electric light system, as provided in this Act, and operate the same until such emergency shall have passed.

SEC. 13. The Public Service Commission or its legal successor, after hearing the interested parties, upon notice and order in writing, shall have the power to declare the forfeiture of this franchise and all rights inherent in the same for failure on the part of the grantee to comply with any of the terms and conditions thereof, unless such failure shall have been directly and primarily caused by an act of God, public enemy or *force majeure*. Against such declaration of the forfeiture by the Public Service Commission or its legal successor, the grantee may apply for the remedies provided in Section thirty-five of Act Numbered thirty-one hundred and eight, as amended.

SEC. 14. At any time after forty years from the date of the approval of this Act, the Republic of the Philippines or any of the political subdivisions thereof to which the right may be assigned, may purchase, and the grantee shall sell thereto, all of its plant, poles, wires, buildings, real estate and all other property used in the enjoyment of this franchise, at a valuation based in part upon the net earnings of the grantee and its true worth on the books, making the proper deduction for depreciation; in part on the cost of the actual reproduction of said property, less depreciation, and, in part, on the original cost of said property, less depreciation, the valuation to be determined after hearing by the three Commissioners of the Public Service Commission, sitting as a board of arbitrators, whose decision by a majority of the members thereof shall be final.

SEC. 15. The rates for the light service, flat rate as well as meter rate, fixed by the grantee, shall always be subject to regulations by the Congress of the Philippines or by the proper authorities, and shall in no case be in excess of forty centavos per kilowatt hour: *Provided*, That only subscribers who have more than ten outlets installed in one building shall be entitled to be furnished with a meter.

SEC. 16. Whenever in this franchise, the terms "grantee" is used, it shall be held and understood to mean and represent the Surigao Electric Company, Incorporated, its representatives, successors or assigns.

SEC. 17. This Act shall take effect upon its approval. Enacted without Executive approval, June 19, 1960.

H. No. 2974

[REPUBLIC ACT No. 2950]

AN ACT GRANTING THE MARECO, INC., A TEMPORARY PERMIT TO CONSTRUCT, ESTABLISH, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT RADIO STATIONS FOR THE RECEPTION AND TRANSMISSION OF RADIO COMMUNICATIONS WITHIN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby granted to the Mareco, Inc., a temporary permit to construct, establish, maintain and operate in the Philippines, at such places as the grantee may select, subject to the approval of the Secretary of Public Works and Communications, private fixed point-to-point radio stations for the reception and transmission of wireless messages on radiotelegraphy or radiotelephony, each to be provided with a radio transmitting apparatus and a radio receiving apparatus.

SEC. 2. The President of the Philippines shall have the power and authority to permit the location of said private fixed point-to-point radio stations or any of them on lands of the public domain upon such terms and conditions as he may prescribe.

SEC. 3. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the same shall be void unless the construction of at least one of the said stations be begun within one year from the date of approval of this Act and be completed within two years from said date.

SEC. 4. The grantee shall not engage in domestic business of telecommunications in the Philippines without further special assent of the Congress of the Philippines, it being understood that the purpose of this temporary permit is to secure to the grantee the right to construct, establish, maintain and operate private fixed point-to-point radio stations at such places within the Philippines as the interest of the grantee and of its trade and business may justify.

SEC. 5. The grantee shall be subject to the corporation laws of the Philippines now existing or which may hereafter be enacted.

SEC. 6. This temporary permit shall not take effect until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder, but the grantee may use the international distress frequency of five hundred kilocycles and the high distress frequency of eight thousand two hundred eighty kilocycles whenever necessary.

SEC. 7. No fees are chargeable, as the radio stations that may be established by virtue of this Act shall engage in communications regarding the grantee's business only.

SEC. 8. The grantee shall so construct and operate its radio stations as not interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 9. The grantee shall hold the national provincial and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of its radio stations.

SEC. 10. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this temporary permit, nor the rights or privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any person, firm, company, or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 11. A special right is hereby reserved to the President of the Philippines in time of war, insurrection, public peril or other national emergency and when public safety requires, to cause the closing of the grantee's radio stations or to authorize the use or possession thereof by any department of the Government without compensating the grantee for the use of said stations during the continuance of the national emergency.

SEC. 12. Whenever in this temporary permit the term "grantee" is used, it shall be held and understood to mean "Mareco, Inc.," its representatives, successors or assigns, unless the context indicates otherwise.

SEC. 13. This temporary permit shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted to mean as an exclusive grant of the privileges herein provided for.

SEC. 14. This Act shall take effect upon its approval.

Enacted without Executive Approval, June 19, 1960.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Agriculture and Natural Resources

BUREAU OF LANDS

LANDS ADMINISTRATIVE ORDER No. 4-12 (a)

September 30, 1960

AMENDING SECTIONS 311, 327, 328, 407 AND 698 OF THE PHILIPPINE LAND SURVEY- ORS MANUAL.

1. SECTIONS 311, 327, 328, 407 and 698 of Lands Administrative Order No. 4-12, otherwise known as the Philippine Land Surveyors Manual, is hereby amended to read as follows:

"311. Plans of original surveys for private land claims shall be titled:

'PLAN OF LAND AS SURVEYED FOR
(NAME OF CLAIMANT)'

Immediately above the signature of the Director of Lands, the following shall be printed: 'I hereby certify that this is a correct plan of the survey herein plotted on the basis of the original field notes and computations which are on file in this Office. Inasmuch as the survey appears to have been made in accordance with existing regulations of the Bureau of Lands, the same is hereby approved. This approved plan, however, should not be construed as title to the land.'

"The lettering to be used on all plans shall be simple, uniform, and mechanical. Ornamental lettering is not allowed."

"327. Private Land Surveyors shall execute surveys of private land claims upon request of the owners or claimants thereof. In such cases, the owner or claimant shall execute and submit an affidavit stating his muniments of title to the land or the basis on which private ownership is claimed and the particulars thereof.

"It shall be the duty of the private land surveyor to verify the allegations made by the affiant, and the result thereof should be indicated in the Surveyor's Certificate [B. L. Form No. 1000 V-17 (60)]."

"328. No surveys of any kind shall be executed within areas covered by classified public forest, or unclassified public forest. Private claims inside such forest areas shall not be surveyed except with authority first obtained from the Director of Forestry. Returns of original surveys of private claims within areas covered by classified public forest or unclassified public forest shall not be accepted for verification and approval without such authority. In cases, however, where the lands to be surveyed are private claims located within unclassified areas, the surveyor shall notify the Director of Forestry of such surveys, and copies of the plans once approved shall be furnished the Bureau of Forestry by the Director of Lands whenever the affidavits show that the claims are doubtful."

"407. Private Land Surveyors and Deputy Public Land Surveyors shall submit the following:

- (a) The survey order or survey authority required in Section 326.
- (i) The affidavit required in Section 327.
- (j) The written authority required in Section 328."

"698. If the project or part thereof is covered by an unclassified public forest, an approximate sketch of the forest area on tracing paper must be submitted to the Bureau of Lands, to be used as reference and guide by the Bureau of Forestry in fixing the forest zone corners included within the project. Private claims inside classified public forest and unclassified public forest shall not be surveyed except with authority first obtained from the Director of Forestry."

2. This Order takes effect immediately.

CESAR M. FORTICH
*Secretary of Agriculture and
Natural Resources*

Approval recommended:

ZOILO CASTRILLO
Director of Lands

BUREAU OF FORESTRY

FORESTRY ADMINISTRATIVE ORDER NO. 7-2

January 3, 1961

FURTHER AMENDMENT TO FORESTRY ADMINISTRATIVE ORDER NO. 15, DATED JULY 31, 1935, KNOWN AS THE RULES AND REGULATIONS PRESCRIBING SCHEDULE OF CHARGES FOR SERVICES RENDERED AND ARTICLES SOLD OR FURNISHED.

1. SECTION 19 of Forestry Administrative Order No. 15, dated July 31, 1935, as amended by Forestry Administrative Order No. 7, dated October 29, 1946, is hereby further amended to read as follows:

"19. For the identification and certification of wood samples, including those presented by district engineers, provincial auditors, provincial treasurers, or other government officials for and in behalf of government contractors, the following schedule of charges shall be followed:

- (a) For lots less than 10
pieces ₱2.00

- (b) For lots of 10 to 25 pieces 4.00
(c) For lots of 26 to 50 pieces 10.00
(d) For lots of 51 to 100
pieces 20.00
(e) For every piece in excess
of 100 pieces 0.15 per piece"

2. Wood, identification requested by other government agency or office which is not for and in the interest of persons or parties having contracts with the government shall be free of charge. But if the site of identification shall require travel, the agency or office so requesting shall pay the traveling expenses of the Forestry representative making the identification.

3. *Date of taking effect.*—This Administrative Order shall take effect on February 1, 1961.

CESAR M. FORTICH
*Secretary of Agriculture
and Natural Resources*

Recommended by:

TIBURCIO S. SEREVO
Director of Forestry

DECISIONS OF THE SUPREME COURT

[No. L-12231. 29 December 1959]

ANG LIONG, petitioner and appellant, *vs.* THE COMMISSIONER OF IMMIGRATION, respondent and appellee.

1. **ALIENS; ADMISSION FOR TEMPORARY STAY; COMMISSIONER OF IMMIGRATION'S POWER; SECRETARY OF FOREIGN AFFAIRS WITHOUT AUTHORITY.**—Commonwealth Act No. 613 governs the entry of aliens into the Philippines. Under section 3 of said Act, the Commissioner is the administrative head of the Bureau of Immigration and in charge of the administration of all laws relating to the immigration of aliens into the Philippines. Under section 47 of the same Act when public interest so warrants, the President of the Philippines may "admit, as nonimmigrants, aliens not otherwise provided for by this Act, who are coming for temporary period only, under such conditions as he may prescribe." The Secretary for Foreign Affairs is not authorized to admit aliens for temporary stay, or extend the period authorized by the Commissioner of Immigration for their stay in the Philippines,
2. **ID.; ID.; POWER TO FORFEIT BOND.**—The authority conferred upon the Secretary for Foreign Affairs to consider and act upon requests for extension beyond the three-month period from temporary visitors in the Philippines, did not and does not deprive the Commissioner of Immigration of his powers to declare a bond forfeited for violation or breach of its terms or conditions.

APPEAL from a judgment of the Court of First Instance of Manila. *Solidum, J.*

The facts are stated in the opinion of the Court.

Gianzon and Uy for the petitioner and appellant.

Acting Solicitor General Guillermo E. Torres and *Assistant Solicitor General Florencio Villamor* for the respondent and appellee.

PADILLA, J.:

This is an appeal from a judgment of the Court of First Instance of Manila dismissing the petitioner's complaint that prays for the issuance of a writ of preliminary injunction to enjoin the respondent from forfeiting a cash bond of P10,000 filed by the petitioner for his wife Wong Woon Pun *alias* Ong Siu and P4,000 for his son Ang Hua; requiring new cash bonds in the same amounts to suspend the enforcement of the respondent's order for their arrest and confinement; and carrying out the said order of arrest and confinement should they fail to file the cash bonds demanded within 48 hours from 22 November 1955; and after hearing, for judgment declaring null and void the respondent's order forfeiting in favor of the Government the said cash bonds filed by the petitioner for his wife and son; making final the writ of preliminary injunction to be issued; ordering the res-

pondent to pay the petitioner the sum of P5,000 for moral damages and P1,000 for attorney's fee; and granting him other just and equitable relief and remedy (civil No. 28274).

The facts, as gathered from the pleadings, stipulation of facts and documentary evidence filed and submitted by the parties, are: The appellant applied to the appellee for temporary admission into the Philippines under the provisions of section 9, Commonwealth Act No. 613, of his wife Ong Siu and son Ang Hua. On 27 June 1955 the appellant executed in vafor of and filed with the Bureau of Immigration cash bonds in the total sum of P14,000 to guarantee the faithful compliance by the visitors of the terms and conditions of their temporary stay in the Philippines. On 1 August 1955 the appellant's wife and son arrived in the Philippines from Hongkong on board a plane of the Philippine Air Lines and were granted by the Commissioner of Immigration a period of three months temporary stay in the Philippines from 1 August to 1 November 1955. On 1 October 1955 attorney José R. Abalos wrote to the Secretary for Foreign Affairs, coursing it through the appellee, requesting that the temporary stay of the two visistors be extended for another three months. On 7 November 1955 the appellee wrote to the appellant reminding him that the authorized temporary stay of the two visitors already had expired on 1 November 1955, requiring him, as bondsman, to effect their departure not later than 12 November 1955, and enclosing a copy of the letter of the Undersecretary for Foreign Affairs dated 29 October 1955, where the latter suggested that, as a matter of policy, the mere filing of petitions for extension of stay of temporary visitors be not considered as a reason for allowing them to stay beyond the period actually authorized and that in cases where the Department of Foreign Affairs should state that the same would be the last extension to be granted the alien concerned, no further petitions be accepted or coursed by that Bureau to that Department; and requested the cooperation of the Bureau of Immigration by taking appropriate steps to effect the departure of all those whose authorized stay already had expired regardless of whether they had filed petitions for extension, if such petitions had not been acted upon on the last day of their authorized stay. On 10 November 1955 the appellant wrote to the appellee requesting that the temporary stay of the two visitors be extended to 30 November because he and his wife had to wind up family affairs in Manila and that he had to prepare for their airplane booking and necessary bank licenses. On the same date, 10 November, the appellee denied his request.

On 11 November 1955 the appellant wrote to the appellee acknowledging receipt of his letter dated 7 November 1955, reiterating his request for a few days extension of the visitors' temporary stay and promising not to ask for further extension. He assured the appellee that should they fail to depart from the country at the expiration of the period of grace granted, the appellee could confiscate the bonds he had filed. On the same date, 11 November, José R. Abalos, counsel for the **appellant**, wrote to the appellee requesting for extension up to 18 November 1955 of the visitors' temporary stay. On 14 November 1955 the appellee granted the appellant's request for extension up to 19 November 1955 within which to cause the departure of the two temporary visitors. On 16 November 1955, attorney Apolonio A. Gonzales, in behalf of the two visitors, wrote to the Secretary for Foreign Affairs requesting for three months extension of their temporary stay. On 17 November 1955, in his indorsement to the appellee, the Secretary for Foreign Affairs authorized the temporary stay of the two visitors for another three months from the expiration of the period of their original authorized stay, provided that their reentry permits to Hongkong continue to be valid at least one month over and beyond their extended stay and provided that the cash bonds filed with the Bureau of Immigration in their behalf be maintained. On 22 November 1955 the appellee wrote to the appellant advising him that the Secretary for Foreign Affairs had granted attorney Apolonio A. Gonzales' request for a three months extension of the two visitors' temporary stay, but that the cash bonds filed by him (the appellant) in favor of the Bureau of Immigration in their behalf were declared forfeited in favor of the Government for violation of the terms and conditions thereof in asking for extension of their temporary stay and in failing to depart from the Philippines on 19 November 1955, the date set for their departure by the appellee; and requiring him to file new cash bonds in the same amounts for the visitors within 48 hours from receipt of notice. On 25 November 1955 the law firm of Gianzon, Uy and Calma wrote to the appellee requesting extension up to 30 November 1955 within which to raise the amount to put up the cash bonds or to avail of other remedies under the circumstances. On 26 November 1955 the appellee granted the appellant's request and postponed the issuance of warrants for the arrest of the visitors until 30 November 1955, but required him (the appellant) to file the cash bonds of P14,000 before that date or cause them to leave the country on said date. On 9 December 1955 the appellant filed an additional cash

bond of P3,000 for the temporary stay of the visitors up to their departure on 7 January 1956. On the last mentioned date the two visitors departed from the Philippines.

Section 40, paragraph (a), sub-paragraph (1), Commonwealth Act No. 613, provides that "The Commissioner of Immigration shall have the power to exact bonds in such amounts and containing such conditions as he may prescribe" "to control and regulate the admission into, and departure from, the Philippines of aliens applying for temporary admission." The cash bonds filed by the appellant in behalf of the two temporary visitors, which embody the same terms and conditions, partly provide:

WHEREAS, the undersigned ANG LIONG has applied to the Commissioner of Immigration for the temporary admission into the Philippines under (Section 9) of the Philippine Immigration Act of 1940, as amended, of one ONG SIU, Chinese female, 35 years of age, a passenger of the _____ due to arrive who arrived at the port of Manila, on _____, 195— I. C. No. _____;

AND WHEREAS, the Commissioner of Immigration has agreed to the temporary stay of said Ong Siu upon filing a cash bond of TEN THOUSAND PESOS, Philippine Currency, with the Bureau of Immigration, subject to certain specified conditions;

NOW, THEREFORE, the undersigned has made a cash bond of TEN THOUSAND PESOS, Philippine currency, in favor of the Bureau of Immigration (Official Receipt No. A-0382921, dated June 27, 1955), (P10,000.00), which cash bond is subject to the following conditions:

(a) That the undersigned, with full knowledge that ONG SIU is a temporary visitor whose authorized stay in this country is limited only up to (Status) and including 3 months, 195—, do hereby undertake that said ONG SIU will actually depart from the Philippines on or before said date so specified, or within such period, as in his discretion, the Commissioner of Immigration or his authorized representative may properly allow;

(a-1) That the undersigned hereby guarantees that no request for extension of the original authorized stay of three (3) months will be filed by him, the alien himself/herself or any other person in his or her behalf; * * *

That breach of any of the conditions above-mentioned shall entitle the Commissioner of Immigration to declare this cash bond or part thereof forfeited, but shall not release the undersigned from the obligation to produce said ONG SIU for such action as may be taken against him/her. No modification of this agreement shall be valid and effective unless made in writing and signed by the Commissioner of Immigration or his duly authorized representative.

Paragraphs (a) (a-1) of the terms and conditions of the bonds filed by the appellant in behalf of the two temporary visitors were violated because instead of departing from the Philippines on 19 November 1955, the date set by the appellee for their departure, on 16 November 1955 attorney Apolonio A. Gonzales requested the Secretary for Foreign Affairs in their behalf

to authorize an extension of three months of their temporary stay from the expiration of the period of their original authorized temporary stay, which request was granted under the terms and conditions stated in an indorsement dated 17 November 1955. Hence the appellee was justified in declaring the bonds forfeited for violation of the terms thereof.

Appellant's claim that the extensions sought by attorney José R. Abalos on 1 October 1955, before the expiration of the original period, and by attorney Apolonio A. Gonzales on 16 November 1955, in behalf of the two visitors, from the Secretary for Foreign Affairs, are not violative of the terms and conditions of the bonds and of the appellant's promise made in his letter dated 11 November 1955 not to ask for further extensions, is without merit and does not alter the fact that the terms of the bond were violated because of their failure to depart from the Philippines on 19 November 1955, the date set by the appellee for their departure, and for that reason the forfeiture of the bonds, as already stated, was justified.

The fact that the Secretary for Foreign Affairs granted their request for another three months extension from the expiration of the original authorized period of their temporary stay does not relieve the appellant from liability on the bonds for violation of their terms and conditions. His undertakings in the bonds guaranteeing "that no request for extension of the original authorized stay of three (3) months will be filed by him, the alien himself/herself or any other person in his or her behalf" and to effect their departure upon expiration of their authorized period of temporary stay, or within such period at the discretion of the Commissioner of Immigration or his authorized representative may allow, are contractual, and the Secretary for Foreign Affairs cannot alter, vary or modify them. Commonwealth Act No. 613 governs the entry of aliens into the Philippines. Under section 3 of the same Act, the Commissioner is the administrative head of the Bureau of Immigration and in charge of the administration of all laws relating to the immigration of aliens into the Philippines. Under section 47 of the same Act, when public interest so warrants, the President of the Philippines may "admit, as non-immigrants, aliens not otherwise provided for by this Act, who are coming for temporary period only, under such conditions as he may prescribe." The Secretary for Foreign Affairs is not authorized to admit into the Philippines aliens for temporary stay, or extend the period authorized by the Commissioner of Immigration for their stay in the Philippines.

The letter dated 15 September 1954 of the Executive Secretary to the Secretary for Foreign Affairs, quoted in full by the appellant on pages 45 to 46 of his brief, which does not form part of the stipulation of facts entered into by and between the parties, where the Secretary for Foreign Affairs was informed that the Cabinet at its meeting decided that "requests for extension beyond the three-month period under the Cabinet policy embodied in the letter of this Office dated March 22, 1954 from those who have been admitted to the Philippines as temporary visitors," "should be considered and acted upon by the Department of Foreign Affairs, along with the power to process and approve applications for entry of aliens under established categories," did not and does not deprive the Commissioner of Immigration of his powers to declare a bond forfeited for violation or breach of its terms or conditions. The Secretary for Foreign Affairs was merely authorized by the Cabinet to act upon requests from temporary visitors for extension of their stay beyond three months, and such authority did not relieve the bondsman from the liability for breach of the terms and conditions of the bonds.

The judgment appealed from is affirmed, with costs against the appellant.

Parás, C. J., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Endencia, Barrera, and Gutiérrez David, JJ., concur.

Judgment affirmed.

[No. L-12875. October 30, 1959]

TEOTIMO S. SAAVEDRA, ET AL., petitioners, *vs.* SIARI VALLEY ESTATES, INC., ET AL., respondents.

1. EXECUTION; PROPERTY OCCUPIED BY PARTY OTHER THAN JUDGMENT DEBTOR; HEARING NECESSARY TO DETERMINE POSSESSION.—When a parcel of land levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession.
2. ID.; ID.; ID.; REASON FOR THE HEARING.—The reason for the hearing is to give the adverse possessor an opportunity to present evidence and justify his possession.

ORIGINAL ACTION in the Supreme Court. Certiorari and Prohibition with Preliminary Injunction.

The facts are stated in the opinion of the Court.

Barrios, Barrios & Lucasan and *Ernesto P. Villar* for the petitioners.

J. C. Orendain & M. G. Sarmiento for the respondent Siari Valley Estates, Inc.

V. S. Concha for respondent Vicente R. Binghay.

MONTEMAYOR, J.:

This is a petition for certiorari and prohibition with preliminary injunction by Teotimo S. Saavedra, Carolina Layague and Filemon Lucasan, to annul the amended order of the Court of First Instance of Zamboanga, dated August 23, 1957, and to enjoin said court from placing respondent Siari Valley Estates, Inc., in possession of Lot No. 8 of Parcel No. 11 and of Parcel No. 9, mentioned in said order.

In Civil Case No. 134 of the Court of First Instance of Zamboanga del Norte, entitled Siari Valley Estates, Inc., *vs.* Filemon Lucasan, a decision was rendered on June 30, 1952, the dispositive part of which reads as follows:

“ . . . adjudicating to the Siari Valley Estate all the cattle that may be found in the cattle ranch of Filemon Lucasan, specially the 321 heads that had been entrusted to his care. . . ordering the defendant to deliver to the plaintiff (respondent herein) all said cattle or their value amounting to ₱40,000.00, to pay damages to the Siari Valley Estate for the 400 heads of cattle. . . at the rate of ₱100.00 per head or ₱40,000, plus interest at the rate of 6% from the date of the trial of this case in January, 1951, and to pay the costs of the proceeding.”

To satisfy the judgment, levy was made on twelve parcels of land, among them Lot 8 of Parcel 11 and Parcel 9, involved in the present petition, which twelve parcels were later sold at public auction on January 14, 1956, to Siari Estates, being the highest bidder. Two days before the sale, petitioners Saavedra and Layague filed with the Sheriff their third party claims to Lot No. 8, Parcel 11 and Parcel 9, respectively. Other third party claimants

filed their claims to the other parcels levied upon, and subsequently, they filed the corresponding suits for annulment of the execution sale, against the Siari Estates and the Sheriff, which cases are now pending in the Court of First Instance of Zamboanga del Norte.

After the expiration of one year from the date of the sale, a final deed of sale covering the twelve parcels was executed by the Sheriff, in favor of the Siari Estates. Thereafter, the Siari Estates tried to obtain possession of the properties bought by it, but it was opposed by defendant Lucasan, claiming that the parcels sold at the execution sale were owned and possessed by third party claimants, the same persons who had filed their third party claims with the Sheriff and had brought the corresponding actions in court against the Siari Estates to annul the execution sale. Despite said opposition, however, the trial court, through Judge Ortega, issued an order dated February 13, 1957, supplemented by a writ of possession, directing the Provincial Sheriff to deliver to the Siari Estates all the properties covered by the final deed of sale. Said order, however, was refused compliance by defendant Lucasan; and the failure of the Sheriff to execute the order and the writ of possession prompted the Siari Estates to ask that said writ be implemented and to pray that the Sheriff be directed to deliver all properties covered by the deed of sale, to it. Defendant Lucasan, as well as the third party claimants, opposed the motion, alleging that since they (third party claimants) were in actual possession of the properties, they could not be deprived thereof, pending determination of their claims of ownership, nor could they be summarily ousted therefrom without due process. The trial court heard the motion and the oppositions thereto, and after receiving evidence, it found that parcels 2, 3, 4, 5, 6, 7 and 8 were covered either by homestead or free patents in favor of third party claimants, and it issued an order dated April 30, 1957, directing the Sheriff to—

“* * * place the plaintiff in possession of parcels Nos. 1, 9, Lot 8 in parcel No. 11 and parcel 12 and of all other parcels mentioned in the Certificate of Sale issued by the Provincial Sheriff in favor of the plaintiff.”

On motion of the defendant and the third party claimants, the trial court on August 7, 1957, amended its order of April 30, 1957, by striking therefrom parcel 12, and the phrase “and of all other parcels, etc.”, so as to read:

“Wherefore, premises considered the Provincial Sheriff is hereby ordered to place the plaintiff in possession of Parcel Nos. 1, 9 and Lot No. 8 in Parcel No. 11 as mentioned and described in the Sheriff sale issued by the provincial sheriff in favor of the plaintiff.” (Annex J, Petition, p. 47, Record)

Dissatisfied with the last order, defendant and the third party claimants moved to reconsider the same, attacking the validity of the execution sale. Acting on said motion, the trial court sustained defendant's claim as to Parcel No. 1, holding that the sale of said parcel was invalid, for the reason that it turned out later that it was registered property, covered by a certificate of title, the Provincial Fiscal having failed to make reference to the number of said certificate and the volume and page of the registration book where said certificate was entered. But as to parcel 9 and lot 8 of parcel 11, the court observed that defendant Lucasan did not act in good faith in transferring them to third parties, said transfers having been made in fraud of creditors. The trial court found that Parcel 9 originally belonged to Filemon Lucasan, but was later sold to his own son, Lorenzo Lucasan, on June 4, 1955, who in turn sold it on January 10, 1956, to third party claimant Carolina Layague, second cousin of Natividad Castellano, wife of Filemon Lucasan himself; while Lot 8 of Parcel 11, originally belonging to Filemon Lucasan, was sold by him to his own daughter Bruna on September 24, 1954, who in turn sold it on November 19, 1955, to third party claimant Teotimo Saavedra. The trial court also said that Parcel 9 and Lot 8 of Parcel 11, were not specifically described in the notice of sale made by the Sheriff. Without prejudice to determining the question of ownership and possession raised by the petitioner in their complaint to annul execution sale, the lower court ordered the Sheriff to give to the Siari Estates possession of Lot. No. 8 of Parcel 11 and Parcel 9. The dispositive part of said order, dated August 23, 1957, (now subject of this petition) reads:

"Wherefore, premises considered, the Provincial Sheriff is ordered to give to the plaintiff the possession of Lot No. 8 parcel 11 and parcel 9, as mentioned and described in the Sheriff's sale issued by the Provincial Sheriff in favor of the plaintiff."

Not satisfied with the above order, third party claimants filed the present petition. Petitioner Saavedra and Layague contend that the lower court acted without or in excess of its jurisdiction for the reason that they were not parties in the original case and, therefore, may not be bound by the judgment; that inasmuch as they were in actual possession of the property, adverse to the debtor, they may not be ordered ejected; that there was no valid levy and in the notice of sale, the parcels involved were not specifically described; and lastly, that they were not given their day in court.

Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature

of said adverse possession. In the case of *Omeña vs. Gatulayao* (73 Phil. 66, 68), this Tribunal said:

"* * * Judgment rendered in actions in personam, as the instant case, are enforceable only between the parties and their successors in interest, but not against strangers thereto. (Sec. 306, par. 2, of Act No. 190, now Rule 39, sec. 44 (b), Rules of Court.) There may be cases when the actual possessor may be claimed to be a privy to any of the parties to the action, or his bona-fide possession may be disputed, or where it is alleged, as in the instant case, that such possession has been taken in connivance with the defeated litigant with a view to frustrating the judgment. In any of these events, the proper procedure would be to order a hearing on the matter of such possession and to deny or accede to the enforcement of a writ of possession as the finding shall warrant. * * *

The reason for this hearing wherein the adverse possessors are given an opportunity to present their evidence and justify their possession, is given by the Court in the case of *Gozon vs. De la Rosa* (77 Phil. 919, 922), thus:

"es necesario este procedimiento sumario para evitar que algunas personas, para frustrar los verdaderos fines de la ley, invoquen sin razon alguna la teoria de sentencia *in personam*: que no han sido demandadas; que la orden de ejecucion no va contra ellas. Entonces habria que demandar a todas las personas que dependen del demandado o que ocupan la casa por consentimiento solo del demandado. Una persona cualquiera podria ponerse en combinacion con el ejecutado y, entrando en la casa, invocar la defensa de que no ha sido parte de la causa contra la orden de ejecucion."

And in the case of *Santiago vs. Sheriff of Manila* (77 Phil. 740, 743-44), this Court said:

"La sentencia dictada en el presente asunto es *in personam*, y como tal solo es obligatoria para las partes y no para extraños. (Art. 44, par. (b), Regla 39.) Si el recurrente Anacleto Santiago, que no fué parte en la causa por desapucio era poseedor de buena fe de la finca en cuestion, la sentencia dictada en dicha causa no podía ejecutarse válidamente contra él. Se puede insistir, sin embargo, en la ejecución de la sentencia si se prueba que el poseedor es simplemente un causahabiente, o un huésped, o un agente del ejecutado en el propósito fraudulento de frustrar la sentencia; en tal caso, debe haber un procedimiento en el Juzgado de Primera Instancia que expidió la orden de ejecución para la dilucidación del caracter de la posesión del ocupante extraño."

* * * * *

"... Si en tal procedimiento el juzgado encuentra que el extraño no es más que un mero causahabiente o agente o huésped del ejecutado, entonces se seguirá la orden de ejecución contra él. Esto no es óbice, sin embargo, para que el ocupante pueda valerse de cualquier otro remedio legal para la determinación definitiva del título o la posesión sobre la propiedad."

It will be observed that after the hearing, the trial court made the finding that petitioners were presumably party to the scheme to defraud the judgment creditor, being the assignees or transferees of the parcels in question after judgment had been rendered against defendant Filemon Lucasan, their predecessor in interest. Consequently, the

court did not err in ordering the Sheriff to deliver possession to the creditor, Siari Valley Estates. Besides, petitioners herein still have their remedy in court by prosecuting the actions filed by them to vindicate their claims to the properties in question. In the case of *Madrigal vs. Planas*, (G. R. No. L-6570, April 12, 1954), we said:

"Anent the order of respondent Judge dated Feb. 2, 1953, which directs that Jose Isla, Carlos Neri, Jose T. Jose, Juan Planas and the San Miguel Brewery, Inc. vacate the land of plaintiff pursuant to the judgment of the court in the ejectment case, which order is now attacked as illegal because they were not parties to that case, the record shows that before issuing said order, the court conducted summary hearing to determine the nature of the possession of the property claimed by Juan Planas and other occupants, and that at that hearing respondent judge summoned all of them to appear to show cause why they should not be ejected from the premises. And after the hearing was over, respondent Judge found that Juan Planas and the other occupants were mere transferees or possessors pendente lite of the property in question. Respondent judge found that if they had any right at all to occupy the property that right is merely subsidiary to that of defendant Concepcion L. Planas. As such, they are bound by the judgment rendered against the latter in consonance with the doctrine laid down in the cases of *Brodett vs. de la Rosa*, 44 O. G., No. 3, pp. 874-875, and *Gozon vs. de la Rosa*, 44 O. G. pp. 1227-1228. Of course, these are questions of fact as to which there may be controversy, but the proper place where this should be threshed out is not in this proceedings, but in an ordinary action. For the present, we are satisfied that the respondent Judge has acted on the matter in the exercise of his sound discretion."

As regards the contention that there was no valid levy and notice of sale because the parcels were not specifically described, after examining the record, we are satisfied that the parcels in question could have been easily identified from the description contained in the levy; and as to the notice of sale, it was duly published in the newspaper *Vanguard*, published in Dumaguete City and of general circulation in Zamboanga del Norte, this, aside from the fact that petitioners had actual notice of said levy, otherwise, they would not have filed their third party claims before the execution sale.

IN VIEW OF THE FOREGOING, the petition for writ of certiorari and prohibition is hereby denied, with costs against petitioners. The writ of preliminary injunction heretofore issued is ordered dissolved.

Parás, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, Barrera, and Gutiérrez David, JJ., concur.

Petitions denied.

[No. L-12718. February 24, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
OLIMPIO CORPUZ *alias* ALIPIO AND JULIAN SEQUIÑA,
defendants and appellants.

1. EVIDENCE; ALIBI; MUST BE CLEARLY ESTABLISHED.—In order to prosper, alibi must be clearly established and must not leave any room for doubting its accuracy, plausibility and verity.
2. ID.; ID.; POSITIVE IDENTIFICATION OF ACCUSED.—An alibi cannot prevail over an identification of the accused which is substantially clear and satisfactory (*People vs. Aguipo*, L-12123-34, July 31, 1958; *People vs. Fernando*, et al., L-10876, September 23, 1958; *People vs. Dara-ug*, L-11470, September 30, 1957).
3. ID.; ID.; PROOF OF MOTIVE; WHEN IT IS NOT INDISPENSABLE.—Proof of motive is not indispensable where guilt is otherwise established by sufficient evidence. In other words, motive need not be established if the identity of the accused is otherwise shown beyond reasonable doubt (*People vs. Sespene*, L-9346, October 30, 1957; *People vs. Divinagracia*, L-10611, March 13, 1959; *People vs. Arcillas*, L-11792, June 30, 1959; *People vs. Sugagao*, L-11328, April 16, 1958).
4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; QUESTION OF TIME ESSENTIAL.—Evident premeditation cannot be considered to qualify murder where it is not shown when the plan to kill was hatched, or what time elapsed before it was carried out. There is, therefore, no basis for determining whether the accused had sufficient time between the inception of the plan and its fulfillment to dispassionately consider and accept its consequences; and this time is essential to premeditation (*People vs. Custodio*, et al., L-1442, October 24, 1955).
5. ID.; ID.; TREACHERY; SUDDEN AND UNEXPECTED ATTACK.—The killing is qualified by treachery where the attack was sudden and unexpected because the deceased had his back turned when he was first struck on the back of the head at the inception of the aggression, catching him totally unprepared to make a defense of his person. Under such circumstances, defendant-appellants employed means, methods or forms in the execution of the crime which tended directly and specially to insure its execution without risk to themselves (*People vs. Felipe*, L-4919, February 25, 1952; *People vs. Cagoco*, 58 Phil. 524).

APPEAL from a judgment of the Court of First Instance of Pangasinán. Bello, J.

The facts are stated in the opinion of the Court.

Solicitor General Edilberto Barot and *Solicitor Felicísimo R. Rosete* for the plaintiff and appellee.

Braganza & Castillo for the defendants and appellants.

REYES, J. B. L. J.:

This is an appeal from a decision of the Court of First Instance of Pangasinan convicting defendants-appellants Olimpio Corpuz and Julian Serquiña of murder and sentencing each of them to the penalty of *reclusión perpetua*; to jointly and severally indemnify the heirs of the deceased, Juan Tobias, in the sum of ₱4,000.00; and to pay proportionally the costs.

A review of the records discloses the following facts:

On the night of May 12, 1953, at around 9 o'clock in barrio San Leon, Balungao, Pangasinan, the occupants of the house of Juan Tobias were roused by the barking of dogs. Peeping from the side of the house, Francisco Bartolome, a nine-year old boy, and Pedro Quibolen, who helped Tobias work his lands, saw and recognized Julian Serquiña, and a little farther off, the other accused, Olimpio Corpuz, revealed by the light of a petroleum lamp hung outside the door. Juan Tobias invited defendants-appellants to come up, but instead, Julian Serquiña told him to come down and asked him to lead them to Esmeralda, "even up to the stream only"; and when his request was refused, Julian Serquiña ordered Tobias to go ahead of him. When Tobias was already on the ground with his back turned to defendants-appellants, both of them struck Tobias several times with Exhibit "B", a shovel, and Exhibit "C", a handle of a plow, felling him. While running away, witnesses for the prosecution Pedro Quibolen and Francisco Bartolome still heard the deceased being struck repeatedly by defendants-appellants.

From the place of the killing, Pedro Quibolen and Francisco Bartolome ran to the house of Francisco Tobias, brother of the deceased, to call for help, but the latter, seized with fear, would not go to the scene of the crime but instead reported the killing first, to the Philippine Constabulary barracks nearby, and, in the early morning of May 13, 1953, to the municipal authorities who, after an investigation conducted at the scene of the crime, arrested both accused and brought them to the Municipal Building at about 11:00 a.m. The deceased Juan Tobias suffered multiple wounds, particularly described in Exhibit "A", the medical certificate prepared by Dr. Triumfo Magpali, Municipal Health Officer.

Defendants-appellants claim that they never left their respective houses on the night of May 12, 1953, and that, as a matter of fact, they went to sleep at about 7 o'clock that evening. This is sought to be corroborated for Olimpio Corpuz by the testimonies of Juan Corpuz and Teofilo Ancheta, son and son-in-law, respectively, of Olimpio; and for Julian Serquiña, by the testimony of her sister, Felipa Serquiña, who claims that her brother never left their house on the night in question. This defense of alibi cannot be given much credence. By a long line of decisions, it has been held that, in order to prosper, alibi must be clearly established and must not leave any room for doubting its accuracy, plausibility and verity. Clearly, the alibi offered herein does not meet this test, for the only persons seeking to confirm the assertion of the accused that they

never left their houses that night are very close relatives who would naturally testify in their favor¹.

Moreover, defendants-appellants were living only a short distance away from the house of the deceased Juan Tobias. As admitted by Olimpio Corpuz, his house was just around one kilometer from the house of Juan Tobias. For his part, Julian Serquiña estimated that he was residing about 1½ kilometers from barrio San Leon where the killing took place. Due to their proximity to the place of the deceased, it could not have been impossible for the accused to go to the house of Juan Tobias and return to their houses at a later hour of the evening. As has been previously held, for an alibi to be given credence, it must clearly appear that it was physically impossible for the accused to be at the place of the crime at the time it occurred².

Another factor weighing heavily against the defense of alibi put up by defendants-appellants is the fact that they have been clearly identified by the witness Pedro Quibolen and also by Francisco Bartolome. While the latter testified that the companion of Julian Serquiña that night was merely "very similar to Olimpio Corpuz", the testimony of Pedro Quibolen definitely identifying Olimpio Corpuz makes the evidence sufficient to establish also the latter's identity, considering among other things that the witness was familiar with his features, having known him for years. An alibi cannot prevail over an identification of the accused which is substantially clear and satisfactory.³

Indeed, there is no reason why the testimony of the witness Pedro Quibolen and Francisco Bartolome should not be believed, for, as admitted by both accused, there is no motive for those witnesses to testify falsely against them. This lack of a motive to make a false imputation against the accused further strengthens the credibility of the eyewitnesses and is one more factor that discredits the alibi relied on by the accused⁴. The record shows that the two accused were promptly arrested in the morning of May 13, 1953, and it can hardly be believed that between the killing done late in the previous night and the next morning, Pedro Quibolen and Francisco

¹ People vs. Masilungan, L-9733, September 30, 1958; People vs. Villaroya, L-5781-82, August 30, 1957; People vs. Santos L-133, April 30, 1946; People vs. Badilla, 48 Phil. 718.

² People vs. Saladino, L-11063, May 23, 1958; People vs. Divinagracia, L-10611, March 13, 1959; People vs. Andam, L-11383, April 30, 1958.

³ People vs. Aguipo, L-12123-34, July 31, 1958; People vs. Fernando, et al., L-10876, September 23, 1958; People vs. Dara-ug, L-11470, September 30, 1957.

⁴ People vs. Garciola, L-4015, October 30, 1951; People vs. Baltazar, January 4, 1956.

Bartolome, without any motive, could have connived to implicate innocent persons in a charge as serious as the one at bar. The early revelation of the identity of the killers which led to their prompt arrest bespeaks of a spontaneity of reaction not dictated by ulterior considerations.

The defense further alleges that there was no motive on the part of defendants-appellants sufficient to have induced them to commit the crime charged. It does appear of record, however, that the manager of the hacienda wherein the deceased and the accused Serquiña were tenants, proposed that both should exchange lots, but the plan fell through because of the objections of the late Tobias. Anyway, as repeatedly held, proof of motive is not indispensable where guilt is otherwise established by sufficient evidence. In other words, motive need not be established if the identity of the accused is otherwise shown beyond reasonable doubt⁵.

The lower court found that the murder was qualified by evident premeditation. This is not borne out by the evidence in this case, because it is not shown when the plan to kill Juan Tobias was hatched, or what time elapsed before it was carried out. There is no basis for determining whether defendants-appellants had sufficient time between the inception of the plan and its fulfillment, dispassionately to consider and accept its consequences; and this time is essential to premeditation⁶.

However, the record shows that the killing was qualified by treachery, for, aside from the fact that the attack was sudden and unexpected, the deceased Juan Tobias had his back turned when he was first struck on the back of the head at the inception of the aggression, catching him totally unprepared to make a defense of his person. Under such circumstances, defendants-appellants employed means, methods or forms in the execution of the crime which tended directly and specially to insure its execution without risk to themselves.⁷

Although the crime was committed at nighttime, nocturnity is absorbed by treachery.⁸

There is no evidence that the crime was committed in an uninhabited place because for this factor to be appreciated, it must be proven that there were no houses nearby⁹; but this was not done in this case.

⁵ *People vs. Sespene*, L-9346, October 30, 1957; *People vs. Divinagracia*, L-10611, March 13, 1959; *People vs. Arcillas*, L-11792, June 30, 1959; *People vs. Bugagao*, L-11328, April 16, 1958.

⁶ *People vs. Custodio, et al.*, L-7442, October 24, 1955; and Cases cited therein.

⁷ *People vs. Felipe*, L-4919, February 25, 1952; *People vs. Cagoco*, 58 Phil. 524; *People vs. Ambis*, 68 Phil. 635.

⁸ *People vs. Jimenez*, L-7151, May 30, 1956; *People vs. Balines, et al.*, L-9045, September 28, 1956.

⁹ *People vs. Piring*, 85 O. G. (181) 2272.

There is no showing that the crime was committed in the dwelling of the deceased, it not appearing that the latter was attacked or killed in any part of the house or its dependencies.

WHEREFORE, with the modification that the killing is qualified by treachery instead of premeditation, the judgment of the lower court is affirmed, with costs against defendants-appellants.

Parás, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepción, Endencia, Barrera and Gutiérrez, David, JJ., concur.

Judgment affirmed with modification.

[No. L-11895. December 29, 1959]

IN THE MATTER OF THE PETITION OF JESUS J. GO TO BE ADMITTED A CITIZEN OF THE PHILIPPINES. JESUS J. GO, petitioner and appellee, *vs.* REPUBLIC OF THE PHILIPPINES, oppositor and appellant.

CITIZENSHIP; VIOLATION OF ELECTION LAW PRIOR TO FILING OF APPLICATION.—The petition for naturalization of an alien who has all the qualifications required by law and none of the disqualifications for the grant of Philippine citizenship, but who, prior to the filing of his application and contrary to section 56 of the Revised Election Code, mingled politically with the Filipinos and solicited votes of his Filipino friends for the candidate of his preference because, being an alien he himself could not vote during elections, should not be granted.

APPEAL from a judgment of the Court of First Instance of Cebú. *Piccio, J.*

The facts are stated in the opinion of the Court.

Victoriano del Fierro for the petitioner and appellee.

Solicitor General Ambrosio Padilla and Solicitor Isidro C. Borromeo for the oppositor and appellant.

ENDENCIA, *J.*:

Appeal from a judgment rendered by the Court of First Instance of Cebu granting Philippine citizenship to petitioner-appellee Jesus J. Go.

Petitioner-appellee is a Chinese citizen, born in Bogo, Cebu; he is single and has acquired his high school education from the Cebu Roosevelt Memorial Colleges; he has finished the course in Pharmacy, but has not taken the Board Examination, he being an alien; he has no lucrative profession, but he has an allowance of ₱60 from his father. He owns property valued at ₱6,000 which was donated to him by his grandmother on July 17, 1954, or one week before he filed his application for naturalization. He speaks and writes English and the Cebuano dialect; he believes in the principles underlying the Philippine Constitution and is not opposed to organized government nor affiliated with any association or group of persons who uphold doctrines opposed to all organized government; he does not believe in the necessity or propriety of violence or assassination for the success and predominance of men's ideas; he has never been convicted of any crime involving moral turpitude and is not suffering from any mental alienation or any incurable contagious disease. Seemingly he has all the qualifications required by law and none of the disqualifications for the grant of Philippine citizenship and therefore the decision appealed from should be maintained. But inasmuch as his witness Jesus Verallo testified that the petitioner-appellee mingled politically with the Filipinos and soli-

cited votes of his Filipino friends for the candidate of his preference because he could not himself vote during elections, being an alien, the government appealed contending that under the ruling of this Court in the case of *Benluy vs. Republic of the Philippines*, (G. R. No. L-5522, 50 O.G. 142), the decision in question should be reversed.

Section 56 of the Revised Election Code clearly provides that "no foreigner shall aid any candidate, directly or indirectly, or take part in or to influence in any manner any election." Not only in the case aforecited, but also in the cases of *Ernesto Go vs. Republic of the Philippines*, G. R. No. L-12101, Jan. 24, 1959; and *Kiat Chun Tan vs. Republic of the Philippines*, G. R. No. L-12491 Aug. 31, 1959, we ruled that violation of the Election Law committed by aliens prior to the filing of their application is sufficient cause for not granting them Philippine citizenship, such violation being considered a serious offense penalized under Sections 183 and 185 of the Revised Election Code with imprisonment of not less than one year and one day but not more than five years and deportation in case of a foreigner. The facts proven in the instant case are similar to those involved in the aforecited cases. Accordingly the decision of the lower court should be as it is hereby reversed, with costs.

Parás, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Barrera, and Gutiérrez David, JJ., concur.

Judgment reversed.

DECISIONS OF THE COURT OF APPEALS

[No. 26678-R. June 30, 1960]

ARRIOLA-UY COMPANY, petitioner, *vs.* HON. MAGNO GATMAITAN, SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, DIRECTOR OF FORESTRY and JORGE TIRADOR, respondents.

JUDGMENT; CONCLUSIVENESS; EXECUTION.—Although, conceivably, circumstances might arise subsequent to the return of a case from the Supreme Court to the trial court which might justify postponement of the execution of the judgment in the case, an inferior court cannot interfere with the mandate of the superior court where the facts relied on to enjoin execution exist *before* the case is remanded and *before* the Supreme Court has lost its jurisdiction. (Cabigao and Izquierdo *vs.* Del Rosario & Lim, 44 Phil., 182). In *Susano Amor vs. Fernando Jugo*, No. L-922, Dec. 3, 1946, the Supreme Court held that the lower court “cannot review or interfere with any matter decided on appeal, or give other or further relief, or assume supervisory jurisdiction to interfere or reverse the judgment of the higher court.” Once a judgment has become final and executory, the same is conclusive and binding upon the parties, and under the doctrine of *res judicata* or estoppel by judgment, any future attempt to assert matters which could and should have been brought in the previous litigation cannot prevail. (Velasquez *vs.* Gil, et al., G. R. No. L-8860, June 28, 1956; Brillantes *vs.* Castro, G. R. No. L-9223, June 30, 1956; Aguirre *vs.* Aguirre, G. R. No. L-10665, Aug. 30, 1958; Aragon *vs.* Aragon, G. R. No. L-11472, March 30, 1959.)

ORIGINAL ACTION in the Court of Appeals. Certiorari with preliminary injunction.

The facts are stated in the opinion of the Court.

Roberto Concepcion, Jr. and *Marciano E. Concepcion*, for petitioner.

Pefianco & Mejorada, for respondent Jorge J. Tirador.

Ramon G. Marfori, for respondents Secretary of Agriculture & Natural Resources and Director of Forestry.

PAREDES, *Pres., J.*:

This is the second time that this case is presented to this Court for consideration. The question now is whether we can still restrain the respondent Judge and his co-respondents from proceeding with the execution of the decision in this case.

On May 23, 1955, the Director of Forestry, through Notice No. 1743, invited sealed proposals “for the privilege to occupy and commercially utilize” a tract of public forest land, located in Esperanza, Province of Agusan and containing an area of 17,500 hectares. Out of the seven applicants who submitted bid proposals, the Director of

Forestry, through a committee on awards, found four to be equally qualified to operate the timber concession, namely, petitioner Arriola-Uy Company, respondent Jorge J. Tirador, Watts Selective Philippine Timber Co., Inc., and the Sanchez Logging Co., so that the area in question was to be divided between them in the manner convenient and acceptable to them. But the four awardees appealed separately to the Department of Agriculture and Natural Resources, which in turn awarded the entire area to Arriola-Uy Company alone. From the department's decision, Sanchez Logging Co. and respondent Tirador appealed to the Office of the President (DANR Case No. 1219).

On June 29, 1956, the Office of the President, pursuant to the recommendation of the Secretary of Justice, to whom the matter was previously referred, ruled that petitioner Arriola-Uy Co. and Sanchez Logging Co. were disqualified under the Philippine Constitution, because only 50% of the capital of the former company was owned by Filipino citizens—short of the requirement of at least 60%—while the latter, Sanchez Logging Co. was owned by a member of the House of Representatives. In effect, the Office of the President reversed the decision of the Secretary of Agriculture and Natural Resources and awarded the entire area in question to respondent Tirador (Annex A of Respondent's Urgent Motion to Dismiss Petition and Lift Writ of Preliminary Injunction, March 22, 1960). Arriola-Uy Co. filed a motion for reconsideration with the Office of the President, but it was dismissed on January 5, 1957.

On February 9, 1957, Arriola-Uy Co. filed in the CFI of Manila a petition for certiorari, docketed as Case No. 31803, which was later amended to include a petition for mandamus against the Director of Forestry, Secretary of Agriculture and Natural Resources, the Executive Secretary and Jorge Tirador, praying that the above-mentioned order of the Executive Secretary be annulled and set aside. Those respondents contended that Arriola-Uy Co. was not entitled to the remedy because of its disqualification above-referred to; and then respondent Tirador filed a cross-petition for mandamus against his co-respondents for the court to order the latter to issue the license to him. Based on the documentary evidence presented, said court in its decision of October 28, 1957, ruled:

“IN VIEW WHEREOF:

1. The petition of plaintiff Arriola-Uy is hereby dismissed;
2. The cross-petition for mandamus by Jorge J. Tirador is hereby granted; the Court orders the cross respondents to issue the ordinary timber license in favor of cross-petitioner Jorge J. Tirador on the concession in question; pursuant to the law and Forest regulations in force;

3. No. pronouncement as to costs."
(Annex A, Answer of Respondent Tirador.)

On June 16, 1959, this Court, on appeal of Arriola-Uy Co. affirmed *in toto*, the decision of the CFI of Manila.

On July 13, 1959, Arriola-Uy Co. filed a petition for review by *certiorari* of the aforesaid decision of this Court in the Supreme Court, docketed as G.R. No. L-15646.

On August 14, 1959, the Supreme Court, by resolution, dismissed that petition for *certiorari*. On October 12, 1959, after said resolution has become final and executory, and after the motion for reconsideration of Arriola-Uy Co. was denied, the entry of judgment was made. Thereafter, the case was remanded to this Court and the CFI of Manila for execution.

On October 19, 1959, respondent Tirador, by counsel, filed a petition for execution in the CFI of Manila. Said court issued the writ of execution; but on October 23, 1959, a motion to set aside and to stay the order of execution was filed by Arriola-Uy Co.

On October 24, 1959, the CFI of Manila issued the following order:

"If it was true as Arriola-Uy Co. now alleges in its petition for reconsideration that having amended its Articles of Partnership on July 16, 1959, so that Maximino Arriola contributed P80,000.00 and Francisco Uy P50,000.00, as a consequence of which even though Francisco Uy is a Chinese the partnership itself would no longer be disqualified to obtain a franchise since the partner owning more than 50% of the capital stock is a Filipino (Annex A of the motion to set aside), this Court takes it that the effect of it would be to give unto Arriola-Uy Co. a valid ground to sustain its position in the present case, that is to say, to hold that its petition in the present case should be granted; *but if that was the case, this Court also takes it that such a point could and should have been raised before the judgment of the Court of Appeals became final, or if it had already become final at least should have been raised in the petition for certiorari with the Supreme Court; this court does not see in the records that such a point has been raised in the Court of Appeals or in the Supreme Court; if it had raised it, this Court will take it that both the Court of Appeals and the Supreme Court refused to reconsider on that alleged ground of change of the Articles of Partnership; if it had not raised it, this Court will take it that petition Arriola-Uy Co. should be considered already barred to raise it with this Court for the reason that the Articles of Partnership having been amended in July 1959, and the decision of the Supreme Court having become final and executory only on October 12, 1959, if not with the Court of Appeals at most with the Supreme Court that such a point could and should have been raised.*

In view whereof, the Court is of the opinion and so holds that no sufficient merit has been shown in the motion to set aside and to stay the order of execution filed on October 23, 1959 by Arriola-Uy Co; and the same is hereby denied; but conformably with the motion in open court of Arriola-Uy Co's. counsel, the Court stays the enforcement of the writ of execution issued by it for a period of 30 days, or up to November 24, 1959, so that Arriola-Uy Co. may

secure a writ of preliminary injunction to restrain this Court from enforcing its writ of execution; if that writ of preliminary injunction is not secured by that time, let the writ of execution issued by this Court be given full force and effect." (Underscoring ours.) (Annex D, Answer of Respondent Tirador.)

On November 20, 1959, Arriola-Uy Co. filed the instant petition for *certiorari* with preliminary injunction, praying that this Court (1) issue a writ of preliminary injunction to restrain the respondent judge from proceeding with the execution of his decision of October 28, 1957, (2) order the respondents to answer the petition and after due hearing to order the annulment of the order of execution issued on October 24, 1959 by the respondent judge, and (3) thereafter to enjoin the other respondents from executing the aforesaid decision of the respondent judge "until petitioner's motion in DANR Case No. 1219 is finally resolved." In its petition, at bar, Arriola-Uy Co. alleges, among other things, that on July 31, 1959, or before the aforesaid decision became final and executory, it *amended* its articles of partnership as shown in the amended articles of partnership and certificate of the Commissioner of the Securities, attached thereto as Annexes A & B, respectively; that because such amendment "produced a vital and substantial change in the factual premises of the case", petitioner filed on September 10, 1959 the corresponding petition for reconsideration in the Office of the President of the Philippines (Annex C), contending that even if Francisco Uy be found to be a Chinese, his participation in the partnership capital under the amended partnership does not disqualify Arriola-Uy Co. from applying for and securing the timber concession in question; *that said petition for reconsideration is still under study and pending resolution in the Office of the President*; that the respondent judge acted with grave abuse of discretion amounting to lack of jurisdiction when he denied petitioner's urgent motion to set aside and/or to stay the writ of execution because the petition for reconsideration was still pending in the Office of the President; that the immediate execution of the decision, dated October 28, 1957, of the respondent judge will be grossly inequitable and cause irreparable damage and injury to the petitioner, and "encroach upon the executive prerogative to choose who among the qualified applicants is best fitted to enter into the concession"; and that petitioner is willing to put up a bond in the amount required by this Court for the issuance of the preliminary injunction to restrain the execution of the aforementioned decision of the respondent judge "during the pendency of the petitioner's motion in DANR Case No. 1219." (Italics ours.)

We issued the writ of preliminary injunction.

On December 3, 1959, respondent Tirador filed his answer, praying that the writ of preliminary injunction be dissolved and/or quashed upon his filing of a counter-bond if required, that the case be immediately set for hearing on the merits, and that the petition be dismissed with damages and costs against petitioner.

Respondent Tirador denies petitioner's allegations and states, among other things, that petitioner filed the instant proceeding "merely to delay, harass, annoy and embarrass respondent who has already suffered and will continue to suffer untold losses and damages, now already amounting to more than P100,000.00 not including unrealized profits * * *." As affirmative defenses, respondent Tirador alleges that petitioner is barred to sue in this Court because of (a) *res judicata*, the case involving the same parties, subject-matter and causes of action as those decided in Civil Case No. 31803 of the CFI of Manila, CA-G. R. No. 21899-R of the Court of Appeals and G.R. No. L-15646 of the Supreme Court, which decision of said courts has already become final and executory; (b) *estoppel by judgment*, for petitioner's alleged amendment of its articles of partnership on July 31, 1959 was prior to the time the decision has become final, or while said decision was then pending in this Court, and even prior to the Supreme Court's determination thereof, so that the effect of the alleged amendment should have been brought before or in said Courts; and said amendment was also subsequent to the deadline set (July 19, 1955) by Forestry Notice No. 1743 for submitting bids, so that to sustain it would "prejudice other bidders it being iniquitous, unfair and contrary to the very essence of competition"; (c) lack of jurisdiction, there being no showing that the writ of preliminary injunction was issued in aid of this Court's appellate jurisdiction within the meaning of Section 30, Republic Act No. 296, and the decision has now become final and executory; and (d) lack of cause of action, the execution of the decision has become the inevitable duty of the respondent judge and the officers or persons involved. In support of his petition to dissolve the preliminary injunction, respondent Tirador contends that its issuance has caused him untold damages and irreparable injury, for he has already arranged contracts in Japan for the delivery of logs that will be produced from the forest concession in question previously awarded to him since October 28, 1957.

On December 17, 1959, respondents Secretary of Agriculture and Natural Resources and the Director of Forestry filed their answer to the petition at bar, praying for its dismissal on the reasons therein set forth.

On January 5, 1960, this case was heard by us; and at said hearing only the counsel of respondent Tirador argued orally with reference to their prayer to lift the preliminary injunction. The parties submitted their respective memorandum.

On March 22, 1960, respondent Tirador, by counsel, filed an urgent motion, alleging that petitioner's only alleged cause of action is premised on its pending petition for reconsideration, dated September 7, 1959 and filed on September 10, 1959 with the Office of the President in DANR Case No. 1219, and upon which petitioner prays that respondents be enjoined from executing the decision dated October 28, 1957 of respondent judge until the above-mentioned petition for reconsideration is finally resolved; that while the instant petition for certiorari is still pending in this Court and particularly on March 14, 1960, the Office of the President denied said petition for reconsideration, dated September 7, 1959, in a decision, the pertinent portion of which reads:

"In view of all the foregoing, this Office is constrained to deny, as it hereby denies, your petition for reconsideration dated September 7, 1959. And in view of the compelling reasons which prevail upon this Office to make its present ruling, and to give the stamp of finality on administrative decisions already reviewed and passed upon by competent courts, it is hereby advised that this Office will not entertain any further petition for reconsideration of its decisions in this case, including that herein made."

that because of said decision, the petitioner has *ipso facto* lost its only cause of action which has now become *moot* and the petition at bar must necessarily fail; that the immediate lifting of the writ of preliminary injunction is now justified; and that it is clear, apparent and manifest that the petition was merely to harass, embarrass and damage herein respondent's reputation and has caused him to suffer and incur pecuniary and moral damages, as well as counsel's fees. Respondent Tirador, therefore, prays that the petition be dismissed; that the writ of preliminary injunction be lifted and dissolved; that petitioner be sentenced to pay him damages in an amount deemed fit by this Court; that petitioner be ordered to pay attorney's fees in the sum of P10,000.00; and that costs be assessed against petitioner.

On May 20, 1960, petitioner Arriola-Uy Co. after having been granted an extension of 30 days, filed his two-page opposition, contending that upon receipt on March 21, 1960 of the decision of the Office of the President above-referred to, petitioner has filed a *new (third)* petition for reconsideration with the Office of the President, which was received by the latter on March 22, 1960 and referred by it to its legal department where it is presently pending (Annex A);

and that in view of said new (third) petition for reconsideration, respondent Tirador's urgent motion to dismiss is without basis and should be denied.

On May 27, 1960, respondent Tirador filed his reply to petitioner's opposition to the former's motion to dismiss, stating, among other reasons, that the new or third petition for reconsideration above mentioned has already been denied on March 23, 1960 by the Office of the President, as follows:

"GENTLEMEN:

With reference to your petition for reconsideration of the denial of your motion for reconsideration of the decision of this Office dated June 29, 1956, in DANR Case No. 1219 (Tirador vs. Arriola-Uy), I wish to inform you that after a careful study thereof, this Office finds that the same is a mere repetition of the arguments previously submitted.

In view thereof, the petition is hereby denied. Please consider this case a closed matter in so far as this Office is concerned.

Very truly yours,

By authority of the President:

(SGD.) NATALIO P. CASTILLO
Executive Secretary";

that said letter was sent to the petitioner by registered mail on April 10, 1960, as shown in the records of the Office of the President; that it is false, therefore, that when petitioner filed on May 20, 1960 its opposition to respondent Tirador's urgent motion to dismiss, its new (third) motion for reconsideration was still pending; and that petitioner has misled the courts by misrepresenting facts. Thus, respondent Tirador reiterates the prayer in his motion to dismiss of March 22, 1960 above mentioned.

The foregoing facts and circumstances clearly show that the main basis of the instant petition of Arriola-Uy Co. is that he has filed a petition for reconsideration on September 10, 1959 with the Office of the President. Again, when the latter denied said petition for reconsideration on March 14, 1960, petitioner Arriola-Uy Co. in opposing respondent Tirador's above urgent motion to dismiss, seeks the stay of the execution on the same ground—that he has filed a new but in fact the third petition for reconsideration with the Office of the President on March 22, 1960. And it has been established, as shown above, that the Office of the President once more denied the new or third petition for reconsideration on March 23, 1960, calling petitioner's attention to consider the case "a closed matter" insofar as that office is concerned. This being the case, we cannot ignore petitioner's attempt in the instant proceeding to mislead us in not disclosing the fact that its new or third petition for reconsideration had already been denied on March 23, 1960, much prior to the

time it (petitioner) filed its last pleading (Opposition to Respondents' Motion to Dismiss) on May 20, 1960. The presumption stands uncontradicted that petitioner must have received a copy of the letter of denial, which, according to respondent Tirador, was sent to the former by registered mail on April 10, 1960, "as appearing in the records of the Office of the President". (Reply to Opposition to Respondents' Motion to Dismiss", p. 6). In this connection, our attention has been fittingly called to what we said in *Juan Dumdum vs. Sec. of Public Works & Communications*, CA-G. R. No. 18788-R, Nov. 29, 1957, to wit:

"The formality of public bidding demands that after the deadline, no changes should be made by any bidder, both with respect to his application and his seal bid. To permit bidders, who are disqualified to bid for lack of necessary requisites, to cure or save their bids, even after the bids have been opened, is undoubtedly, an infringement of all the principles governing sound biddings."

Undoubtedly, petitioner has already exhausted all available administrative remedies, and, in view of what appears in the foregoing, his contention in the proceeding at bar that there is still a pending petition for reconsideration in the Office of the President is no longer valid and subsisting.

Furthermore, the decision of the Office of the President declaring petitioner Arriola-Uy Co. as disqualified was, as shown above, sufficiently and thoroughly reviewed and sustained by the courts—including the Supreme Court which denied the certiorari against the Court of Appeals. In *Brillantes vs. Castro*, G. R. No. L-9223, June 30, 1956, our Hon. Supreme Court declared:

"* * * There are, however, cases in which the doctrine of *res judicata* has been held applicable to judicial acts of public, executive or administrative officers and boards. In this connection, it has been declared that whenever a final adjudication of persons invested with power to decide on the property and rights of citizens is *examinable* by the Supreme Court, upon a writ of error or a certiorari, such final adjudication may be pleaded as *res judicata*." (30 Am. Jur., *Judgments*, Sec. 164, p. 910.) (Underscoring Supplied)."

That the articles of partnership, therefore, has already been amended and that petitioner now satisfies the constitutional requirement regarding ownership of capital, is not a sound argument. For one thing, that point should have been raised earlier, considering that such amendment took place in July, 1959 and the decision of the Supreme Court became final and executory only on October 12, 1959. In *Cabigao and Isquierdo vs. Del Rosario & Lim*, 44 Phil., 182, the Supreme Court said that, conceivably, circumstances might arise subsequent to the return of a case from the Supreme Court to the trial court which might

justify postponement of the execution of the judgment in the case; but where the facts relied on to enjoin execution exist *before* the case is remanded, and *before* the Supreme Court has lost its jurisdiction, the inferior court cannot interfere with the mandate of the superior court. Again, in *Susano Amor vs. Fernando Jugo*, No. L-922, Dec. 3, 1946, said court held that the lower court "cannot review or interfere with any matter decided on appeal, or give other or further relief, or assume supervisory jurisdiction to interfere or reverse the judgment of the higher court." Besides, our courts have consistently held that once a judgment has become final and executory, the same is conclusive and binding upon the parties, and under the doctrine of *res judicata* or estoppel by judgment, any future attempt to assert matters which could and should have been brought in the previous litigation cannot prevail. (*Velasquez vs. Gil, et al.*, G. R. No. L-8860, June 28, 1956; *Brillantes vs. Castro, supra*, G. R. No. L-9223, June 30, 1956; *Aguirre vs. Aguirre*, G. R. No. L-10665, Aug. 30, 1958; *Aragon vs. Aragon*, G. R. No. L-11472, March 30, 1959).

IN VIEW OF ALL THE FOREGOING, we believe we should, as we do hereby, dismiss the petition at bar, and dissolve the writ of preliminary injunction, with costs against the petitioner Arriola-Uy Company.

IT IS SO ORDERED.

San Jose and Lanting, JJ., concur.

Petition dismissed.

[No. 25920-R. July 12, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. ISIDRO ZARAGOZA, PEDRO ZARAGOSA, and EXEQUIEL
RICACHO, accused and appellants.

1. CRIMINAL LAW; HOMICIDE; ACCOMPLICE.—An accomplice is one who, not being included in article 17 of the Revised Penal Code, which defines who are principals, cooperates in the execution of the offense by previous or simultaneous acts. Such acts should not constitute a direct part in the execution of the offense itself, and should not be indispensable for its accomplishment, otherwise the participant would be guilty as a principal. The cooperation contemplated in the legal provision implies participation in the criminal design of the principal, although not such as to show the existence of conspiracy. (*People vs. Tamayo*, 44 Phil., 38, 54; Decision of the Supreme Court of Spain of January 5, 1909, cited in *Viada*, 6 Supp. 152).
2. ID.; ID.; SLIGHT PHYSICAL INJURIES.—In a case of homicide where one of the accused, after striking his victim twice with his fist, desisted from further act of aggression and there are no physical traces of those blows on the deceased, his responsibility should be limited to his own acts which in the instant case constitute only slight physical injuries.

APPEAL from a judgment of the Court of First Instance of Albay. Alcasid, J.

The facts are stated in the opinion of the Court.

Burgos & Sarte, for accused and appellants Pedro Zaragosa and Isidro Zaragosa.

Ramon C. Fernandez, for accused and appellant Exequiel Ricacho.

First Assistant Solicitor General Guillermo E. Torres and *Solicitor Federico V. Sian*, for plaintiff and appellee.

MAKALINTAL, J.:

Appellants were accused and convicted of homicide in the Court of First Instance of Albay and were sentenced to suffer an indeterminate penalty ranging from 10 years of *prision mayor*, as minimum, to 17 years, 4 months and 1 day of *reclusion temporal*, as maximum; to indemnify jointly and severally the heirs of the deceased Fructuoso Reodique in the sum of ₱6,000.00, plus ₱2,000.00 as moral damages and ₱700.00 for medical and funeral expenses, without subsidiary imprisonment in case of insolvency; and to pay the costs.

The incident which gave rise to the present case took place on November 22, 1954 in barrio Loyong-Kali of the municipality of Oas, province of Albay. The spouses Fructuoso Reodique and Inocencia Rangasa had a parcel of land which they were cultivating and on which they had their residence, adjacent to another parcel which

was being worked by appellant Isidro Zaragosa. For a period of several years there had been some trouble between them concerning the boundary between their respective properties. There was a clump of bamboos inside the land of the spouses which Isidro had tried to claim as his. In the morning of the aforesaid date, noticing that some of the bamboos had been cut, Inocencia went with her husband to the place and asked of nobody in particular and in a loud voice as to who had cut the bamboos without their permission. Isidro Zaragosa, who was then working on his land nearby, answered that it was he, and a heated interchange of words ensued, with appellant Pedro Zaragoza joining in on Isidro's side. The spouses then went home to take their lunch. Shortly thereafter, Inocencia missed her husband in the house. She proceeded to the place where they had the previous argument with the Zaragozas and saw Fructuoso lying on his back on the ground, with Isidro on top of him and kneeling on his chest while Pedro was giving him fistic blows and appellant Exequiel Ricacho was holding his legs. She immediately shouted for help, called her daughter Lourdes and told her to summon a policeman. Upon hearing her shouts appellants released their victim and went away. Rufo Binalla, who had witnessed the incident from beginning to end, then approached and helped Fructuoso to his house. From there he was taken immediately to the clinic of Dr. Benito Reverente for examination and treatment.

The foregoing facts were testified to by Inocencia Rangasa. The testimony of Rufo Binalla, which gives full corroboration to her story and described, in addition, the details of the incident before Inocencia arrived is summarized by the trial court in its decision as follows:

"At about 11:00 o'clock in the morning of November 22, 1954, he was in the house of Inocencia Rangasa cleaning and drying the palay which he harvested, after which he took his lunch. After eating his meal at about past 12:00 noon, he went to the toilet near the bank of the ditch to answer a call of nature. On his way, as he was approaching the place, he heard somebody groaning, so he looked around and saw Fructuoso Reodique being choked by Isidro Zaragosa near the embankment of the ditch. He came nearer the bank of the ditch, and saw Fructuoso being held on the neck by Isidro with both hands. Isidro then dragged Fructuoso from the bank of the ditch up to the place near the dam where Exequiel and Pedro were. As the struggle was continued between Fructuoso and Isidro near the dam, Exequiel Ricacho joined in and took hold of the waist of Fructuoso and forced him down. Once down, Exequiel pulled out the bolo that was tied to the waist of the victim. At this juncture, Pedro Zaragoza approached, joined in the scuffle, and took the bolo from Exequiel who said in Bicol, 'Tirahan na nindo ta dai nang armas', meaning, 'hit him now because he is no longer armed', and forthwith Pedro delivered

fist blows on the right face and right shoulder of Fructuoso, while Isidro was continuously choking him. As Fructuoso was lying face upward and struggling to loosen himself from the hold of Isidro, Exequiel took hold of his feet while Isidro knelt on chest and abdomen, at the same time choking him, thus causing his tongue to loll out, and then Isidro inserted his hand into the mouth of Fructuoso. At that very moment Inocencia Rangasa arrived, and seeing her husband being mauled thus, she shouted for help and called to her daughter, Lourdes Reodique, to summon a policeman. When the accused heard Inocencia calling for help, Exequiel and Pedro left, while Isidro stayed behind and continued choking Fructuoso and kneeling on his abdomen and chest. Finally, Isidro took hold of both hands of the victim, pulled and raised him up, and then twisted his arm and released and left him. As Fructuoso was weak and staggering, Inocencia called him (Rufo Binalla) to help her husband. Rufo approached Fructuoso half-carrying and half-supporting him and brought him home. Fructuoso was immediately taken to the clinic of Dr. Benito Reverente."

Dr. Reverente found that Fructuoso had suffered contusions on the neck, contusions and lacerations on both lips and reddish discolorations on the abdomen. The patient complained particularly of pains in the epigastric region. The doctor treated him continuously for twelve days, but stopped the treatment at the end of that period because he had to leave for Manila. In the morning of December 8, 1954 Reodique's abdominal pains became more serious. He was taken to the Milwaukee Hospital in Polangui, Albay, and examined by Dr. Josefina Catanguí who diagnosed the case tentatively as "acute pancreatitis" or inflammatory condition of the pancreas, brought about by some external violence. A few hours after his admission the patient died. The next day an autopsy was performed by Dr. Antolin Lotivio of the provincial hospital. His findings were that the immediate cause of death was internal hemorrhage in the intestines and left lung as a result of the rupture of the blood vessels caused by the application of external violence on the chest and abdomen, the rupture having produced gradual extravasation of blood over a period of several days. Dr. Lotivio was positive that the hemorrhage had not been due to any natural disease. This fact, taken in relation with the pains felt by the deceased in his epigastric region, which precisely was the part of his body that suffered when appellant Isidro Zaragosa knelt on top of him, leads us definitely to the conclusion that death was the consequence of that assault.

Appellants' version of the incident is entirely undeserving of credence. According to Isidro Zaragosa it was the deceased who attacked him with a bolo upon the urgings of his wife. As correctly observed by the trial court it is inconceivable and contrary to human nature that a wife should induce her husband to attack another

and thereby jeopardize his own life, especially considering in this case that Fructuoso Reodique was already an old man of sixty-three while his supposed intended victim was not only much younger but bigger and stronger, and that there at the time, ready to come to his aid, were the two other appellants, Pedro Zaragoza and Exequiel Ricacho. Isidro's statement is that when the deceased came at him all he did was to catch the man's right hand holding the bolo, grab him by the neck until the bolo fell to the ground, and release him immediately thereafter. Such testimony does not account for the contusions and lacerations sustained by Fructuoso, or the signs of violence and resulting pains in the region of his abdomen.

Upon the evidence as a whole the conviction of appellant Isidro Zaragoza of the offense of homicide is correct, although as pointed out by his counsel and by the Solicitor General he did not really intend to commit so grave a wrong as that which was committed. This circumstance, however, which the law consider as mitigating, is off-set by the aggravating circumstance of disregard of the respect due the offended party by reason of his age.

As far as appellants Exequiel Ricacho and Pedro Zaragoza are concerned, we are not convinced that they are equally liable as principals in the offense of homicide. Conspiracy has not been proved by direct testimony of any witness or otherwise shown by the surrounding circumstances. There was no previous common design or concert of mind among all the appellants to perpetrate the criminal act. But on the part of Exequiel Ricacho he collaborated with Isidro Zaragoza by holding the deceased, first by the waist and then by the legs, while Isidro was choking him and later on kneeling on his chest and abdomen. Such act of cooperation, however, not being indispensable in the commission of the offense by Isidro, makes Exequiel only an accomplice under Article 18 of the Revised Penal Code. Even without Exequiel's help Isidro could have thrown his victim single-handedly to the ground and indeed he continued to kneel on him after his two companions broke off the attack upon hearing Inocencia Rangasa shout for help.

An accomplice is one who, not being included in Article 17, which defines who are principals, cooperates in the execution of the offense by previous or simultaneous acts. Such acts should not constitute a direct part in the execution of the offense itself, and should not be indispensable for its accomplishment, otherwise the participant would be guilty as a principal. The cooperation contemplated in the legal provisions implies participation in the criminal design of the principal, although not such as to show the existence of conspiracy. In *People vs.*

Tamayo, 44 Phil. 38, 54, the Supreme Court, after an extended review of the authorities, said: "As against an accomplice, a court will sometimes draw the inference of guilty participation in the criminal design from acts of concert in the consummation of the criminal act and from the form and manner in which assistance is rendered, where it would not draw the same inference for the purpose of holding the same accused in the character of principal. This is because, in case of doubt, the courts naturally lean to the milder form of responsibility." In the same case a decision of the Supreme Court of Spain of January 5, 1909, is cited (Viada, 6 Supp. 152) as follows:

"It appeared that three persons took part in an aggression which resulted in the death of the person assaulted. The fatal wound was inflicted by the discharge of a gun or pistol in the hands of one of the three assailants, and at the time the fatal wound was inflicted one of the other two was holding the victim by the neck, choking him. The other was at the same time engaged in holding him by the arms, with the result that the victim was unable to move and defend himself when the slayer fired the fatal shot. The supreme court of Spain held that the accused who caused death was principal and that the other two were accomplices, although it did not appear that there was any previous concert. The court observed that there was concert at the moment of consummating the act, and that the acts of the accomplices implied criminal complicity from the form and manner in which assistance was rendered."

The decision just cited, as well as that in the Tamayo case itself, which involves facts comparable to those now before us for consideration, lead us to conclude that appellant Exequiel Ricacho should be held guilty as accomplice in the crime of homicide.

With respect to appellant Pedro Zaragoza, his participation was not even that of an accomplice. All he did was to strike his victim with a fist, first on the right face and again on the right shoulder. No physical traces of those blows were found by Dr. Reverente when he examined the offended party. After striking his victim twice Pedro desisted from any further act of aggression. Following the ruling in the Tamayo case, his responsibility should be limited to his own acts, which constitute only slight physical injuries punishable with *arresto menor* or a fine of ₱100.00 and censure, under Article 266 of the Revised Penal Code.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the judgment appealed from is hereby modified in the sense that appellant Isidro Zaragoza is declared guilty as principal of the crime of homicide with one aggravating and one mitigating circumstances off-setting each other and is hereby sentenced to suffer an indeterminate penalty of from 8 years and 1 day of *prision mayor* to 14 years, 8 months and 1 day of *reclusion temporal*; appellant Exe-

quiet Ricacho is declared guilty as accomplice of the same crime and is hereby sentenced to suffer an indeterminate penalty of from 2 years, 4 months and 1 day of *prision correccional* to 8 years and 1 day of *prision mayor*; and appellant Pedro Zaragoza is declared guilty of slight physical injuries and is hereby sentenced to suffer 20 days of *arresto menor*. The indemnity imposed by the court *a quo* in the amount of ₱6,000.00 is reduced to ₱3,000.00, and, together with the amounts adjudged by said court as moral damages and medical and funeral expenses, will be paid by appellants Isidro Zaragoza and Exequiel Ricacho in the proportion of two-thirds and one-third, respectively, subject to the provision of Article 110 of the Revised Penal Code. The costs shall be paid equally by all appellants.

So ORDERED.

De Leon and Castro JJ., concur.

Judgment modified.

[No. 25846-R. June 30, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
DIOSCORO CUNANAN, accused and appellant.

CRIMINAL LAW; ESTAFA UNDER ART. 315, SUB-PARAGRAPH 1 (b), REVISED PENAL CODE; WITHHOLDING MONEY IN GOOD FAITH AND FOR SELF-PROTECTION.—Where the accused and the complainant had an independent account pending and unsettled between the two, and the former is entitled to an accounting of the amount turned over by him to the latter, for which he claims credit, and believes that said complainant is indebted to him for his expenses on a work he thought was completely done by the aforesaid complainant, his withholding in good faith of the balance of complainant's share to protect himself—assuming that he misappropriated or converted the money—completely wipes out the penal consequences and he cannot be held guilty of *estafa*. U. S. *vs.* Berbari, 42 Phil., 152, 166-170, citing III Viada, 4th ed., pp. 515, *et seq.*; U. S. *vs.* Santiago, 27 Phil., 408. *See also*: Tubb *vs.* People, *et al.*, 53 O. G., No. 18, pp. 6096, 6100; People *vs.* Conde, CA-G. R. No. 5029-R, April 10, 1951; People *vs.* Taguba, CA-G. R. No. 5638-R, June 19, 1951.

APPEAL from a judgment of the Court of First Instance of Bulacan. Montesa, J.

The facts are stated in the opinion of the Court.

José W. Diokno, for accused and appellant.

Assistant Solicitor General Antonio A. Torres and *Solicitor Hector C. Fule*, for plaintiff and appellee.

SANCHEZ, J.:

Spouses Gerardo Villena and Candida Torres were owners of two contiguous parcels of land bordering the National Highway in Apalit, Pampanga, with an aggregate area of a little less than 13 hectares.

On August 11, 1956, said spouses, as "owners", and defendant Dioscoro Cunanan, as "subdivider", executed a Subdivision Contract, Exhibit A, under which the latter was to take possession of the lands heretofore mentioned—subdivided into 300 lots—"with power to exercise all the acts necessary to sell the same, as subdivided in accordance with the subdivision plan submitted for approval with the Bureau of Lands, into residential and commercial lots and to introduce thereon all improvements required by the National Planning Commission". All expenses for the subdivision, development, promotion, administration and sale of lots, and realty taxes and/or assessments over the property unless otherwise assumed by the purchasers, shall be borne by the subdivider. The owners were to receive as fixed participation thirty-five per centum (35%) of the gross receipts of the subdivision, which share would be increased correspondingly to the equivalent of thirty five per centum (35%) of the gross receipts of any and every lot sold should the subdivider be able to sell at prices higher than those fixed in paragraph 5 of the contract.

Cunanan took possession of the property, named it "Highway Park Subdivision". He improved the same: placed stones on the main road; installed concrete monuments; cleared the lands of trees inside and cut those in front thereof employing 40 laborers for the purpose; and planted 200 to 300 narra trees on both sides of the subdivision road. He incurred expenses for: promotion of the subdivision; announcement thereof in neighboring towns and barrios by means of jeep with a public address system; printing of circulars and hand-bills, Exhibits 3, 3-a, 3-b and 3-c, which were distributed to the public; and installation of bill-boards near the churches of every town. He spent over ₱2,000.00 of his own money for the subdivision. Result: the value of the property was considerably enhanced.

From August to November, 1956, Cunanan sold several lots. The proceeds thereof totalling ₱10,480.40 were turned over to Mrs. Antonia Cacnio, cashier of the subdivision. The owners' share—according to Exhibit A—amounted to ₱4,077.12. Admittedly, on October 2, 1956, Cunanan paid the owners on account of the latter's share in the gross receipts of the sales the sum of ₱500.00, thereby leaving a balance of ₱3,577.12.

Cunanan invited an American technical man by the name of Arthur Merritt to see the subdivision on the possibility of a housing project. Merritt observed that the property was on the National Highway at the hub of Pampanga towns. He asked Cunanan if he could talk to the owners of the land to ascertain whether cash negotiations over 100 of the lots could be had. A conference was held between the land owners, Cunanan and Merritt in Calumpit, Bulacan. Merritt offered to purchase in cash 4 blocks of more or less 100 lots. In that conference, a son of the owners asked Cunanan if the latter would agree that those 4 blocks be excluded from the operation of the subdivision contract, such that the latter would not participate in the proceeds of the sale thereof. Cunanan refused; felt then and thereafter that the owners wanted to ease him out of the subdivision.

On December 17, 1956, a civil complaint before the Court of First Instance of Pampanga was lodged by the owners against Cunanan (Civil Case No. 1171), for the rescission of the subdivision contract.

On December 26, 1956, the present information for estafa, planted upon Article 315, sub-paragraph 1(b) of the Revised Penal Code, was filed against Dioscoro Cunanan before the Court of First Instance of Bulacan. The indictment, in affect, avers that Cunanan, with grave abuse of confidence and with deceit, misappropriated, misapplied and converted to his personal use and benefit the owners' unpaid share of ₱3,577.12, to the damage and prejudice of Gerardo Villena in the said amount.

After due hearing, the Court of First Instance of Bulacan found defendant guilty as charged and sentenced him to suffer an indeterminate penalty, the minimum of which shall not be less than 4 months of *arresto mayor*, and the maximum shall not be more than 1 year and 8 months of *prision correccional*, with the accessories of the law, to indemnify the offended party in the sum of P3,577.12, with subsidiary imprisonment in case of insolvency, and to pay the costs.

Defendant appealed.

The statute under which appellant was prosecuted and convicted reads:

"ART. 315. Swindling (estafa).—Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

" * * * * *

"3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos,

" * * * * *

" * * * provided that in the four cases mentioned, the fraud be committed by any of the following means:

"1. With unfaithfulness or abuse of confidence, namely:

" * * * * *

"(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property;"

The essential elements of the crime of *estafa* envisioned in the legal precept just-quoted are well-stated in *People vs. Papagayo*, 51 O. G., No. 1, pp. 199, 203, as follows:

"(a) that the accused should have received the thing and not taken it from the owner thereof; (b) that the thing received be personal property susceptible of appropriation; (c) that the thing be received for safekeeping or on commission, or for administration, or under any other obligation involving the duty to make delivery or return the same; and (d) that there be misappropriation or conversion by the accused of the thing received to the prejudice or injury of another (*U. S. vs. Sevilla*, 43 Phil., 186; *People vs. Nepomuceno*, 46 Off. Gaz., 6128)."

1. The jugular vein of the case simply is this: Was there misappropriation or conversion by appellant to the prejudice or injury of complaint?

An analysis of the facts is in order.

We first go to the contract—which was drafted by complainant's lawyer. Clauses 5, 6, 7 and 10 recite:

"5. The owners shall receive as fixed participation thirty five per centum (35%) of the gross receipt of the subdivision, provided that

the interests charged against buyers for purchases of the lots, on the unpaid balance shall accrue exclusively to the subdivider. On the basis of the above fixed participation, the owners' share shall not be less than five pesos and sixty centavos (P5.60) per square meter on all lots abutting the National Highway; not less than four pesos and sixty centavos (P4.60) per square meter on all lots abutting the Apalit Municipal Road leading to the Municipal Building; and not less than three pesos and seventy centavos (P3.70) per square meter on all the rest of the lots in the subdivision on sales made.

6. The owners' share shall be increased correspondingly to the equivalent of thirty five per centum (35%) of the gross receipts of any and every lot sold should the subdivider be able to sell at a higher price. There shall be a higher price when by computing the amount of thirty five per centum (35%) out of any higher selling price said thirty five per centum (35%) shall be over or more than said guaranteed prices per square meter for the owners.

7. In cases of outright sales (when the entire purchase price is paid at one time only as distinguished from sales on installment) the owners shall receive their full thirty five per centum (35%) participation thereof, and for this purpose the subdivider shall keep separate books therefor.

* * * * *

10. The subdivider shall furnish the owners or their authorized representative with copies of all the contracts to sell or contract of sale above referred to for every month within the first ten (10) days of the month following, stating therein the names of the buyers, the particular lots sold, and the proceeds received.

Likewise, within ten (10) days after rendering full accounting of all the sales for the preceding month as provided above, the subdivider shall pay to the owners the latter's fixed participation of thirty five per centum (35%) of the gross cash receipts for said month in cash or in the form of a manager's check payable to the owners, or their order, at the option of the owners. And to secure the payment of the owners' participation as herein provided, the subdivider shall cause his cashier's bond to be made in favor of the owners in the amount of P2,000.00 monthly in surety bond which shall be maintained available to the owners from month to month."

The People's evidence shows that out of a total of P10,480.40 paid over by purchasers of lots, appellant received from the subdivision cashier, during the period from July 31, 1956 to September 6, 1956, a total of P4,297.70. Exhibit C-1. Appellant's share of 65% under the contract would amount to P6,812.26. In other words, what appellant actually got was even less than that to which he is entitled under the terms of the agreement. But appellant had not profited by the amount thus received. He spent that sum and over P2,000.00 of his money, plus certain other disbursements made by the cashier, for the improvement and promotion of the subdivision. In fact, the entire receipts from lot purchasers, except P1.16 (see Exhibit C), were totally spent in the project.

All of these, it must be conceded, were for the benefit not only of appellant but also the owners of the land. For,

the shares of each in the gross proceeds of the sales necessarily must have to increase with the rise in the selling price of the land. For the owners, there is the added advantage: The value of their property increased tremendously.

In *People vs. Nepomuceno*, 46 O.G., No. 12, pp. 6128, 6132, this Court held that the element of misappropriation or conversion consists of:

"The words 'appropriation' (*apropiación*) or 'diversion' (*distracción*) indicate the action of the agent whereby he disposes of the thing as if it were his own. Now, this appropriation presupposes two different facts, the seizure (*aprehensión*) of the thing received and the *intent* of appropriating it. It is evident, therefore, that there can be no appropriation without intent, without fraud.' (Viada, pp. cit. Vol. 6, p. 446, quoting Boitard.)

'* * * en el orden penal, 'apropiarse' equivale a apoderarse de alguna cosa, o dicho de otro modo, atribuirse lo que es de otro (Sen. Trib. Sup. of Spain, March 22, 1929, 119 Jur. Crim., p. 549).

Cuello Calon (Codigo Penal [6th Ed] Vol. 2, p. 839), has developed the same ideas in the following manner:

'2. El segundo elemento del delito es la apropiación o distracción de la cosa en perjuicio de otro, en perjuicio del propietario, o del legítimo poseedor, o de un tercero, por ejemplo, de un fiador. Hay apropiación cuando el agente hace suya la cosa incorporandola a su patrimonio con animo de disponer de ella como dueño. En cuanto el depositario, el comisionista, el administrador, etc., dispone como dueño de la cosa, se le apropia o distrae. En ciertos casos, *v. gr.*, cuando la enajena y se apropia su precio (11 bis- o la consume, si es cosa fungible, no puede haber duda acerca de la existencia de la apropiación, pero cuando se presenten casos dudosos, en lo que no aparece de modo tan manifiesto el animo de apropiación, serán los tribunales quienes habrán de resolver, para lo cual tendrán en cuenta las facultades que confería al poseedor legítimo el título concreto de su posesión. Pero es preciso para la existencia del delito que haya una verdadera apropiación, pues la demora en la entrega o devolución de la cosa no constituye esta infracción (12). Existe *distracción* en el caso del que habiendo recibido una cosa de su dueño o de su poseedor, haga de ella un uso diverso de aquel para el que la fue entregada (en esto consiste la distracción en sentido estricto en cuanto se aparta la cosa del destino a que estaba dedicada) (12 bis)."

The situation here is this: The acts of appellant (1) were clothed with good faith; (2) did not redound merely "to his personal use and benefit"; and (3) did not work "to the damage and prejudice" of the owners. There is no estafa.

2. But assuming that appellant withheld the sum of P3,577.12 for his own exclusive personal use and benefit, still another roadblock is effectively erected against his conviction therefor. Clause 16 of the contract provides:

"16. The subdivision of the lands above-described having already been made and the corresponding subdivision plan submitted to the Bureau of Lands for approval as well as filling of the said lands began before the date hereof, for which the owners actually spent the sums of two thousand five hundred seventy pesos (P2,570.00) for; monuments, computation sheets, computation, original plan, tracing

plan, verification fee, verification of technical description, transiting and labor, and one thousand six hundred seventy two pesos (P1,672.00), respectively, the subdivider hereby binds and obligates himself to pay said amounts to the owners on or before August 15, 1956, failure to do which the owners shall be entitled to rescind this contract and withdraw therefrom and whatever improvement may have been made or introduced on said lands by the subdivider by virtue of these presents shall belong to said owners without any right whatsoever of reimbursement or removal thereof on the part of the subdivider."

In pursuance of this covenant, appellant delivered to complainant Gerardo Villena the following amounts:

August 15, 1956	P2,100.00
September 12, 1956	1,100.00
October 2, 1956—"for the filling of the roads on the subdivision and the amounts advanced" to the surveyor	
"as per contract"	1,042.00
Total	P4,242.00,

evidenced by the check, Exhibit 2, and the receipts, Exhibits 2-a and 2-b.

What happened? Complainant's representation under Clause 16 were found to be incorrect. A good number of the items paid for were not done; the roads were not at the correct places because they were laid out before there was a survey. And, they had to be reconstructed again. The plan was wrong and a new survey had to be made. Expenses for all of these were defrayed by appellant personally. And yet, the latter, in addition, had to make the full payment called for in Clause 16 aforesaid. These circumstances, coupled with the express denial of appellant that he misappropriated the balance at the share of complainant, once again, prove good faith and lack of fraudulent intent.

What is more, this payment by appellant to complainant shows that there is an independent account pending and unsettled between the two. Appellant had every reason not to pay the balance of complainant's share because he was under reasonable necessity for self-protection. He is entitled to an accounting of the amount of P4,242.00 turned over by him to complainant. He claims credit for his expenses on a work he thought was completely done by complainant. He believes on this score that complainant is indebted to him. Having withheld in good faith the balance of P3,577.12 to protect himself, the penal consequences—assuming that he misappropriated or converted the money—are completely wiped out. He cannot be held guilty of estafa. *U.S. vs. Berbari*, 42 Phil., 152, 166-170, citing: III Viada, 4th ed., pp. 515, et *et seq.*; *U.S. vs. Santiago*, 27 Phil., 408. See also: *Tubb vs. People*, et al., 53 O.G., No. 18, pp. 6096, 6100; *People vs. Conde*, CA-G.R. No. 5029-R, April 10, 1951; *People vs. Taguba*, CA-G.R. No. 5638-R, June 19, 1951. At any rate, the mere fact

that the balance of the share was not turned over by appellant to complainant "does not in itself prove that he had misappropriated or converted" the same. *Concepcion vs. People*, 74 Phil., 63.

An over-all appraisal of the case convinces us that complainant's action against appellant is civil in nature, and that the alleged reprobated act is not criminal.

Upon the view we take of this case, the judgment appealed from is hereby reversed; and defendant-appellant is hereby acquitted, with costs *de-oficio*.

IT IS SO ORDERED.

Natividad and Angeles, JJ., concur.

Judgment reversed.

[No. 25994-R. June 21, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
FREDERICK G. WEBBER, accused and appellant.

1. CRIMINAL LAW; ESTAFA WITH ABUSE OF CONFIDENCE; EVIDENCE; CONVERSION OR MISAPPROPRIATION; PROOF REQUIRED.—In the crime of estafa with abuse of confidence, positive proof of conversion or misappropriation is not required. The demand for the return of the thing delivered in trust, and the mere failure of the accused to account thereof, are circumstantial evidence of misappropriation (*People vs. Zamora*, 2 Phil., 382; *Tubb vs. People*, et al., 53 Off. Gaz. 6096).
2. *Id.*; *Id.*; WORDS "CONVERT" AND "MISAPPROPRIATE" CONSTRUED.—The words "convert" and "misappropriate" connote an act of using or disposing of another's property as if it were one's own; or of devoting the thing to a purpose or use different from that agreed upon. To misappropriate to one's own use includes not only conversion to one's personal advantage but every attempt to dispose of the property of another without right (9 R. C. L., pp. 1275, 1756; *People vs. Panes*, 37 Phil. 118; *People vs. Navoa*, CA-G. R. No. 6914-R, Sept. 28, 1951).

APPEAL from a judgment of the Court of First Instance of Manila. Tan, *J.*

The facts are stated in the opinion of the Court.

Alfredo Catolico, for accused and appellant.

Assistant Solicitor General Jose P. Alejandro and *Attorney Concepcion F. Torrijos*, for plaintiff and appellee.

ANGELES, *J.*:

An appeal from a decision of the Court of First Instance of Manila finding the accused Frederick G. Webber guilty of *estafa* as defined under paragraph 3, article 315 of the Revised Penal Code and sentencing him to four (4) months and one (1) day of *arresto mayor*, to indemnify the complainant Menses Barroga in the sum of ₱350.00, with subsidiary imprisonment in case of insolvency, and to pay the costs.

The appellant was the president and general manager of the Agusan Consolidated Mining Company, a registered mining entity with offices at 314 Gonzaga building, Manila. As president of the company, he personally took charge of employing the personnel and laborers necessary for the operation of the mining firm. He required every prospective employee to put up a cash deposit in an amount fixed and determined by him as a condition precedent to the laborer's employment and to serve as a guaranty for a continuous and faithful performance of his duties.

On July 24, 1955, appellant received at his office in Manila a cash deposit of ₱350.00 from the complainant under express condition that the said deposit shall remain as "the exclusive property of the employee" to be re-

funded to the complainant in case of his separation from work, provided that he submits a clearance signed by all department heads of the mining company which state that the employee has no outstanding financial obligations or liabilities to the company. The delivery by the complainant of the cash deposit to the appellant was evidenced by a receipt signed by the latter on behalf of the mining company, Exhibit B.

On August 1, 1955, the complainant called on the appellant at his office in Manila and on the same date a contract of employment, Exhibit A was signed by them, appellant representing the Agusan Consolidated Mining Company. The contract of employment having been duly executed, the complainant worked as a mill laborer at the company's mines in Rosario, Agusan until August 1956 when he voluntarily quit his employment because of the failure of the appellant to pay his accrued salaries. Thereafter, complainant secured a clearance from Jose Barroga, the office manager at the mines in Agusan, and submitted it to the appellant in Manila. He then demanded the return of his cash deposit of ₱350.00, but the appellant failed to return the same claiming that he had no money. After several verbal demands for the return of the cash deposit have not been satisfied by the appellant, Menses Barroga filed complaints with the Bureau of Labor and in the fiscal's office.

Appellant admits having personally received the cash deposit of ₱350.00 from the complainant. He does not dispute the fact that he engaged the services of the complainant under the terms and conditions set forth in the contract of employment, Exhibit A. He denies, however, that he converted to his own use the cash deposit or that he received the same for the purpose of defrauding the complainant. According to him, all the assets and liabilities of the Agusan Consolidated Mining Company, a registered association, were transferred to and assumed by the Agusan Consolidated Mining Company, Inc., a corporation registered in the office of the Securities and Exchange Commission on March 3, 1956. He testified that he is not sure whether or not the complainant had submitted a clearance to him, and declared that Jose Barroga was definitely not authorized to issue clearances. For the failure to return the cash deposit, appellant gives as reason the inability of the board of directors of the corporation to pass the necessary resolution.

The various assignment of errors raised in the appellant's brief may be reduced to the following contentions: 1. Since it was the Agusan Consolidated Mining Company or its successor, the Agusan Consolidated Mining Company, Incorporated, which contracted the obligation

to return the cash deposit of Menses Barroga, it is the said corporation, to which all the assets and liabilities of the association were transferred, which should effect the return of the said cash deposit; 2. Before the offended party can claim the return of his cash deposit, he must submit a clearance duly signed by all chiefs of the departments of the mining company, stating that he has no outstanding financial or proprietary responsibilities; 3. There was no evidence of misappropriation or conversion by the appellant of the cash deposit of the complainant, and the lower court erred in presuming that it was misappropriated or converted to the use and benefit of the appellant; 4. The appellant was erroneously convicted under the multiple and confusing allegations of the information; 5. As long as the herein accused is willing to return the cash deposit, even during the trial of the case, he cannot be held guilty of the crime charged for the reason that the original responsibility has not as yet set in.

We shall now discuss the several contentions as they are above enumerated.

1. The first contention of the appellant is untenable. Admittedly, it was the appellant who personally required the employees to make a cash deposit. This was testified to by him in this wise: "Q. Mr. Weber, I understand that there were many laborers in your company, in the Agusan Consolidated Mining Company of which you are the President and General Manager; is that correct? A. There were laborers—part-time laborers, daily laborers, monthly, and so forth. Q. And most of them were required by you, as President and General Manager, before they can be employed, to deposit with your company certain amounts of money; is that correct? A. On the employment contract, as has been presented, I had to resort to such safety measures due to the fact that I had already lost many thousands of pesos previously due to the fact that I had given advances of money, food supplies prior to their employment and I had discovered that they had not even worked, or worked for two days and they disappear. Therefore, the money lost, or rather the company had no assurance or security for the money that I always give to their families prior to their employment." (t.s.n., pp. 3-4, Nov. 12, 1958.) Appellant personally received the cash deposit of the complainant, and to evidence such receipt he signed the corresponding instrument, Exhibit B. The pretense that the cash deposit was turned over to the corporation is without merit. Nothing but the naked testimony of the appellant supports the claim that said deposit was transferred to the corporation. The books of the corporation could have easily shown such

alleged transfer, and yet said books were not presented during the trial of this case. Moreover, nowhere in the effects enumerated by the appellant as having been transferred to the corporation do we find the cash deposit of the complainant. "Q. What happened with the assets or claims of the Agusan Consolidated Mining Association? A. The association and its officers placed the machineries, power, electric plants, generators, milling machineries, mining machineries installed in the claims but (which) were found to be of commercial value. That was done under the association prior to its actual transfer of properties to the corporation and prior to the registration of the corporation in the Securities and Exchange Commission. * * *" (t. s. n., p. 15, Nov 5, 1958.) From the above testimony, it can be reasonably implied that the cash deposit in question was never transferred to the corporation as indeed it could not be acquired by the new corporation because it is "the exclusive property of the employee" and not an asset of the association subject to acquisition by the new corporation; and from the testimony of the appellant himself it appears that he was personally taking care of the cash deposit. "Q. And because you were the General Manager and President of said company, you issued receipts for the money that you received personally from each of them; is it not? A. It is only natural because I personally want to take care of the money of said laborers." (t. s. n., p. 4, November 12, 1958.) Assuming that the appellant caused the cash deposit to be transferred to the corporation, such act would not relieve him of criminal responsibility for as will be shown hereinbelow his said action was tantamount to conversion of the complainant's deposit.

2. As regards the claim of the appellant about the submission by the complainant of the required clearance, we find that his testimony is negative in character. He declared that he is not sure whether or not Menses Barroga had submitted a clearance to him. Against this testimony of the appellant, there is the positive declaration of the complainant, corroborated by Jose Barroga, that after quitting his work at the mines he presented a clearance to the appellant at Manila. By the evidentiary rule, the positive testimonies of Menses and Jose Barroga must be accorded greater weight and credence. The claim of the appellant that Jose Barroga was never authorized to issue clearance is strongly contradicted by the evidence of the prosecution, Jose Barroga testifying that as office manager at the Agusan Mines one of his powers and duties was to issue clearances to employees. Indeed, from the appointment of Barroga, Exhibit C, wherein he was designated as office manager, with the additional positions of cashier, accountant and paymaster, having charge of

all office personnel, chief *bodegueros* and their assistants, canteen and store keepers and drivers and transportation personnel, being responsible to the general and assistant general superintendents only, there is strong reason to believe that he was really authorized to issue clearances. Moreover, appellant cannot put up a valid excuse for his failure to return the cash deposit of the complainant the alleged defect or infirmity of the clearance submitted to him by the latter. He never advised the offended party that the clearance which he submitted was defective; instead he told the complainant that he could not return the cash deposit because he had no money, thereby inducing the complainant to believe that the clearance was valid and that the only reason for the appellant's inability to return the deposit was lack of funds.

3. The contention of the appellant that there was no evidence of conversion or misappropriation is untenable. Positive proof of conversion or misappropriation is not required in a crime of estafa with abuse of confidence such as what the appellant has committed in this case. The mere fact that a demand for the return of the thing delivered was made, as in the present case, and the accused failed to account for the subject-matter, are circumstantial evidence of misappropriation (*People vs. Zamora*, 2 Phil. 382; *Tubb vs. People, et al.*, 53 Off. Gaz. 6096). Moreover, as we have said elsewhere above, the very evidence of the appellant supplies the element of conversion or misappropriation in this case. The cash deposit was admittedly delivered to and received by the appellant in trust. It was understood upon delivery of the money that it was to remain as the exclusive property of the complainant and that the appellant could not devote it to any purpose other than that of a guaranty for a continuous and faithful performance of duties by the complainant. Appellant had no right to transfer the cash deposit to any entity and when he turned it over to the corporation, without authority from the complainant, express or implied, he committed an act of conversion or misappropriation punishable by law (*U.S. vs. Alabanza*, 11 Phil. 476; *U.S. vs. Eustaquio*, 31 Phil. 188; *People vs. Vda. de Co*, CA-G. R. No. 5909-R, Jan. 26, 1951; *People vs. Figueras*, CA-G. R. No. 3910-R, Aug. 12, 1949; *People vs. Flores*, CA-G. R. No. 2522-R, Sept. 8, 1949). For the words "convert" and "misappropriate" connote an act of using or disposing of another's property as if it were one's own. They presuppose that the thing has been devoted to a purpose or use different from that agreed upon. To appropriate to one's own use includes not only conversion to one's personal advantage but every attempt to dispose of the property of another without right (9

R. C. L., pp. 1275, 1756; *People vs. Panes*, 37 Phil. 118; *People vs. Navoa*, CA-G. R. No. 6914-R, Sept. 28, 1951).

4. The information under which the appellant was prosecuted alleged amongst others "That on or about July 24, 1958, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and felonously defraud one Menses G. Barroga in the following manner, to wit: the said accused, * * *, received in trust from the said Menses G. Barroga the sum of P350.00 as a cash bond deposit * * *, under the express obligation on the part of the accused of returning the said sum * * *; but once in possession of the said sum of P350.00 far from complying with his aforesaid obligation and despite repeated demands made upon him to account for the same, * * *, said accused has failed and refused and still fails and refuses to do so and instead, with intent to defraud, wilfully, unlawfully and feloniously misappropriated, misapplied and converted the said sum of P350.00 to his own personal use and benefit, to the damage and prejudice of the said Menses G. Barroga * * *." While the aforequoted information may not be considered to be a model pleading, nevertheless it contains sufficient allegations of the commission of the crime of estafa. The averment that the appellant failed to have the cash deposit of the complainant forthcoming despite repeated demands, resulting in the damage and prejudice of the latter, which allegation is borne out by the evidence, is, in our considered opinion, sufficient to warrant the conviction of the appellant under paragraph 1 (b) of Article 315 of the Revised Penal Code. The lower court erroneously convicted him under paragraph 3 of the same article. There is no showing that the appellant required the complainant to make a cash deposit by fraudulent means or through false pretenses. It is, however, clear that the two elements of estafa under Article 315, subsection 1, paragraph (b), consisting of deceit in receiving the cash deposit, which in the instant case is substituted by the abuse of confidence in its misappropriation and conversion, and the damage caused to the complainant, are present, and the appellant should be accordingly punished. The claim of the appellant that he had no intention of defrauding the complainant or that he did not profit by the transaction would not, in the least, alter his criminal responsibility, for in the kind of estafa which he has committed the mere abuse of trust or confidence resulting in the prejudice or damage of the complainant is sufficient (*U.S. vs. Pascual*, 10 Phil. 621, 623; *People vs. Filomena Vda. de Santos*, CA-G. R. No. 6439-R, Sept. 26, 1951).

5. Appellant's willingness to return the cash bond, after he has committed the crime at bar, cannot affect his

criminal liability. It is a well-settled principle in this jurisdiction that payment subsequent to the commission of the estafa has no other effect than the extinction of the civil liability, but not of the criminal liability (Javier *vs.* People, 70 Phil. 550; People *vs.* Velasco, 42 Phil. 75, 81; People *vs.* Yu Shian Hun, CA-G. R. No. 5711-R, Nov. 15, 1950). Neither the subsequent reparation of the damage nor the reimbursement of the money embezzled nor the compromise which might subsequently be entered into between the parties can condone or exempt the guilty person from the penalty which he has incurred, because the same affects only the civil and not the criminal liability of the offender (U. S. *vs.* Ongtengco, 4 Phil. 144; U. S. *vs.* Rodriguez, 9 Phil. 153; People *vs.* Angtengco, CA-G. R. No. 3560-R, Oct. 17, 1949). And even if the complainant accepts the cash deposit which the appellant is allegedly willing to return, such acceptance cannot obliterate the appellant's criminal responsibility for estafa by conversion. First, because indemnification of the offended party does not demonstrate that there was no fraud or breach of trust by the accused to the prejudice of the complainant. Second, because an agreement between the parties to extinguish the criminal liability by payment of the damage would be inoperative and void as against public policy (People *vs.* Santos, (CA) 47 Off. Gaz. 805).

The crime committed by the appellant is punishable by *arresto mayor* in its maximum period to *prision correccional* in its minimum period. Applying the indeterminate sentence law, the principal penalty that should be imposed upon the appellant should be an imprisonment of from four (4) months and twenty-seven (days) of *arresto mayor*, as minimum, to one (1) year and eight (8) days of *prision correccional*, as maximum.

WHEREFORE, the judgment appealed from is hereby modified as follows: Appellant Frederick G. Webber is hereby found guilty beyond reasonable doubt of the crime of estafa defined under paragraph 1, subsection (b), of Article 315 of the Revised Penal Code, and he is sentenced to an indeterminate penalty ranging from four (4) months and twenty-seven (27) days of *arresto mayor*, as minimum, to one (1) year and eight (8) days of *prision correccional*, as maximum, to indemnify the offended party, Menses G. Barroga, in the sum of P350.00, with subsidiary imprisonment in case of insolvency, and to pay the costs. As thus modified, the judgment appealed from is affirmed with costs against the appellant.

IT IS SO ORDERED.

Natividad and Sanchez JJ., concur.

Judgment modified.